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REPORT
100-425

NAVAJO AND HOPI INDIAN RELOCATION AMENDMENTS OF 1988

JULY 11 (legislative day, JULY 8), 1988.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1236]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1236) to reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE

S. 1236 extends the authorization for appropriations for certain programs required to be performed by the Navajo-Hopi Relocation Commission in connection with its duties outlined in Public Law 93-531, enacted in 1974 and amended by Public Law 96-305 in 1980. S. 1236 increases the annual authorization for housing from $15 million to $30 million to allow completion of all the required housing units in 3 or 4 years. In addition, the current appropriation level for incentive relocation bonus payments is increased from $7.7 million to $13 million. This will allow the Commission to make bonus payments to all those relocatees who have voluntarily elected to relocate. About 1,100 have been paid and 1,500 are awaiting payment. Additionally, in 1980 Congress established a discretionary fund for the Commission to assist that agency in carrying out it relocation responsibilities. However, the authorization required that expenditures from the fund could only be used as a match for up to 30 percent of funds from other Federal, state or

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other great program. S. 1236 eliminates the matching requirement in order to free up the funds in the discretionary account.

The Committee amended the bill to provide for a single Commissioner, to change the Commission to an independent office in the Office of the Secretary of the Interior, and to require an updating of the Commission's Plan and Report.

Background

HISTORICAL SUMMARY

The Hopi reservation in northeast Arizona was originally established by Executive Order in 1882 "for the use and occupany of the Moqui (Hopi) Indian and such other Indians as the Secretary of the Interior may see fit to settle thereon." The Navajo reservation was located to the east on the Arizona and New Mexico border. The Hopi people have the longest authenticated history of any group in the United States. They still occupy the same villages as their ancestors did as early as 1300 A.D. Generally regarded as a peaceful people, the Hopis are farmers and ranchers. The Navajo lifestyle at the time was nomadic and their traditional subsistence is tending sheep.

As early as 1885, three years after the Hopi reservation was established, Navajo sheep herders migrated to Hopi lands and the Hopi Tribe registered complaints with the Department of the Interior. Initially, the Department attempted to stop Navajo intrusion onto the Hopi reservation but such efforts were abandoned in later years, though the Hopi Tribe continually sought relief from the Department of the Interior. By the late 1930's the Hopi people were restricted to an area about one-fourth the size of their original reservation. This area, now known as District 6, has been occupied virtually exclusively by Hopi Indians. The rest of the 1882 reservation, about 1.9 million acres, has been the subject of a continuing dispute between the two tribes as to ownership and occupancy. The entire 1882 reservation is now completely surrounded by the Navajo Reservation which has expanded to accommodate its growing population. In 1882, the Hopi population was 1,800 and is now about 11,000. By contrast, the Navajo population in 1882 was 8,000 and is now 165,000.

In 1958, the Congress authorized the federal courts to adjudicate ownership of the disputed land. In *Healing v. Jones* (1962), the court decided that the area, both surface and subsurface, was owned jointly by the two tribes. Thus, the area became known as the Joint Use Area (JUA). Because the JUA was occupied primarily by Navajo people, the Hopis were essentially denied use of the lands which they legally co-owned.

In 1974, the Congress passed Public Law 93-531, authorizing the federal courts to partition the surface ownership of the land, 50 percent to each tribe. The mineral estate was to remain in joint ownership and remains so today. Public Law 93-531 established the Navajo-Hopi Relocation Commission to accomplish relocation of Navajos and Hopis residing on lands partitioned to the other tribe. The tribes were given a specified period of time in which to reach an agreement on division of the land and, if they were not successful, a mediator was to be chosen to partition the land. In fact, the

tribes did not reach agreement, and the mediator's final recommendation on partition was entered by the federal courts in 1979.

At that point the Commission began work on its Report and Plan which was submitted to Congress in April 1981. The Report enumerated 2,801 Navajo households with 9,525 members who resided on Hopi partitioned lands (HPL) and 31 Hopi households with 109 members residing on Navajo Partitioned Lands (NPL). Such enumerations have been subject to continuous debate and updating. The Commission also appraised the value of existing structures in both HPL and NPL. The 1974 Act provided that the relocation would be completed five years from the effective date of the Report and Plan. Thus, the date for completion of relocation was July 7, 1986, a deadline which prompted a great deal of concern in the 99th Congress.

The 1974 Act also authorized the Navajo Tribe to acquire 250,000 acres of Bureau of Land Management (BLM) lands. In 1980, Congress enacted amendments to Public Law 93-531 which authorized transfer of these 250,000 acres of BLM lands to the Navajo Tribe without cost and also authorized the Tribe to acquire an additional 150,000 acres of fee land at the Tribe's expense. This 400,000 acres approximates 42 percent of the area of the HPL from which Navajos are moving. These land acquisitions have been completed and some so-called "new lands" are now being developed for relocatees.

In 1985, President Reagan personally asked Judge William P. Clark, former Secretary of the Interior, to investigate the difficulties between the Navajo and Hopi Tribes and to determine if a compromise solution could be agreed to by the two tribes to alleviate the necessity for relocating at least some of the Navajo families from the Hopi Partitioned Lands (HPL). On September 20, 1985, Richard C. Morris, Clark's Assistant and former Solicitor of the Department of the Interior, filed his report with Judge Clark, who then discussed it with the President. The report concluded that efforts to negotiate a settlement between the two tribes had resulted in a stalemate.

Legislative History

93rd Congress: Public Law 93-531 enacted on December 22, 1974, provided for: partition of the JUA; relocation of persons residing on lands partitioned to the other tribe; continued joint ownership and development of the subsurface mineral estate; establishment of the Navajo-Hopi Relocation Commission; and acquisition of 250,000 acres of land by the Navajo Tribe.

96th Congress: Public Law 96-305, enacted on July 8, 1980, provided for: acquisition by the Navajo Tribe of 400,000 acres of new land of which 150,000 would be purchased by the Tribe; provided for life estates for qualified Navajos otherwise subject to relocation; doubled the bonus payments to persons volunteering to relocate; and a construction priority for the new Hopi high school and medical center.

99th Congress: The fiscal year 1986 Continuing Resolution, passed December 19, 1985, appropriated $22 million to the Secretary of the Interior for use in constructing homes and facilities in lieu of such construction by the Commission, with construction priority for

those families actually residing on HPL; earmarked $3.2 million in Federal Lands Highway Program funds for use on the new lands; and prohibited eviction of any family from the HPL until such time as a new or replacement home is available for such family.

Congressmen Udall and McCain introduced H.R. 4281 in the 99th Congress and a hearing was held in early 1986. The bill would have implemented a comprehensive settlement and land exchange proposal that had been advanced by the Navajo Tribe. The bill was not acceptable to the Hopi Tribe and the Navajo Tribe objected to some of the payment provisions. Support for the measure was also not forthcoming from the Administration or from Senator Barry Goldwater. On June 5, 1986, Rep. Udall formally withdrew the bill and Rep. McCain concurred. The pressure for a solution prior to the July 7, 1986 relocation deadline was alleviated by the agreement of the appropriations committees to include language in the 1986 Continuing Resolution to prohibit forced relocation until alternative housing is available.

On July 17, 1986, Senator DeConcini introduced S. 2651, a bill that would have provided for binding arbitration of a land exchange program or, in the alternative, the bill provided for a land exchange similar to that contained in the Udall-McCain bill. The bill was referred to the Select Committee on Indian Affairs but no action was taken.

On June 11, 1986, Senator Cranston introduced S. 2545, which was also referred to the Select Committee on Indian Affairs with no action taken. That bill, supported and requested by the Big Mountain Offense/Defense Committee would have placed a moratorium on the relocation of Navajo and Hopi Indians for an 18-month period. Senator Goldwater also took exception to this bill, particularly in light of some of the gross misstatements of fact that accompanied its introduction.

100th Congress: Senator Inouye introduced S. 1236 on May 19, 1987, to reauthorize the housing relocation program operated by the Commission which was due to expire on September 30, 1987. The Continuing Resolution for FY 1988 contains language to continue the program. The Senate Select Committee on Indian Affairs held a hearing on S. 1236 on December 9, 1987 and a second hearing on April 12, 1988 to fully review the bill and amendments proposed by Senators McCain and DeConcini.

Committe Recommendation and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session on April 28, 1988, by a unanimous vote and with a quorum present, recommends that the Senate pass S. 1236.

Section-by-Section Analysis

Section 1 titles the bill the "Navajo and Hopi Indian Relocation Amendments of 1988".

Section 2 amends section 14(b) of Public Law 93-531 by increasing the authorization for incentive payments by $5.3 million (from 7.7 million to $13 million). Section 14(b) requires that incentive ("bonus") payments be made to individuals who voluntarily applied for relocation within certain time periods. This increased authori-

zation is needed to meet the obligations to heads of households who are waiting to be relocated and who are eligible for incentive payments.

This section also amends section 15 of Public Law 93-531 by increasing the authorization for relocation housing, moving expenses, and payment for habitations and other improvements left on the Hopi Partitioned Land to which eligible relocatees are entitled. The authorization is raised from $15 million annually to $30 million annually.

The Committee believes the increased authorization levels are necessary in order to expedite and complete the relocation program. While there are only a certain number of relocations that can occur at any authorized level, the increase in housing benefits to $30 million will permit the Commissioner to begin addressing the needs of more Navajo families, especially those who complied with the law years ago but are still waiting to receive the benefits to which they are entitled.

Section 3 removes the restrictions on the types of activities for which the Commissioner may use discretionary funds. Under this amendment, those activities which are in support of the Commissioner's direct programmatic responsibilities would be funded in total by the Office of Navajo and Hopi Indian Relocation (hereinafter referred to as "Office"), rather than cost shared with other entities. This change will allow the Commissioner to meet the needs of the relocatees in a more direct manner and significantly improve the ability of the Commissioner to meet his responsibilities under the Act.

Section 4(a)(1) amends section 12 of Public Law 93-531 by establishing an Office of Navajo and Hopi Indian Relocation within the Office of the Secretary of the Interior under the direction of a full-time Commissioner. In Committee hearings, concern was expressed that the independent status of the current Commission would be lost if the Office were brought within the Department of the Interior. This is a legitimate concern; however, the Committee believes that the independent status can be preserved by keeping the Office separate and distinct from the Bureau of Indian Affairs. In addition, annual budget requests for the Office should constitute a separate category in the Interior budget rather than the present line-item in the BIA budget.

The Committee also felt that it was necessary to place the Office under the Secretary in order to insure that there is a greater degree of accountability in the performance and operation of the Office.

The Committee believes that the restructuring of the present three-member Commission to a full-time Commissioner will improve the overall operation and efficiency of the relocation program. An efficient, accountable, and responsive operation is critical, not only to complete the relocation program, but in the development of short and long term plans necessary to address the economic, educational, and social needs of Navajo families and Navajo communities that are directly and substantially affected by Public Law 93-531. The Committee does not intend that the creation of the Office or the new position of Commissioner create or form a new basis for the suspension or delay of the relocation program.

Section 4(a)(1) also provides for the five year appointment of the Commissioner by the President with the advice and consent of the Senate. The Commissioner may be appointed for more than one term and will be granted all powers and duties that are currently the responsibility of the Navajo and Hopi Indian Relocation Commission. All funds will be transferred from the Commission to the new Office.

This section also transfers to the new Office all monies and responsibilities relating to the relocation of Navajo people from Hopi Partitioned Land that are now under the jurisdiction of the Bureau of Indian Affairs. This amendment will permit the BIA to complete the congressional mandate given to them which is currently set to expire at the end of the 1988 fiscal year.

Section 4(a) (2), (3) and (4) make technical and conforming amendments to section 12 of Public Law 93-531.

Section 4(a)(5) amends section 12(g) of Public Law 93-531 by restricting legal services contracts entered into by the Office to appropriated funds and limits the authorization for this purpose to $100,000 per fiscal year. The Committee believes that the Office should make greater use of the Solicitor's office within the Department of the Interior.

Section 4(a) (6), (7), (8), (9) and (10) make technical and conforming amendments to section 12 of Public Law 93-531.

Section 4(b) (1) and (2) make technical amendments to Public Law 93-531 to conform to the amendments to section 12.

Section 4(c)(1) makes technical amendments to section 13 of Public Law 93-531.

Section 4(c)(2) (A) through (F) amend Section 13 of Public Law 93-531 by requiring the Commissioner to submit a new report within six months after the date the Commissioner is confirmed by the Senate on the number of members of the Navajo and Hopi tribes who have relocated from Hopi Partitioned Lands (HPL) and the Navajo Partitioned Lands but who have not received their relocation benefits. The Committee intends that this report should modify and update the 1981 report that provided the same type of enumeration. The Committee is especially interested in the number of Navajo families who have complied with the law, moved off the HPL, but are still awaiting their relocation benefits. This report is also necessary in order to provide the Congress with a reasonable estimate as to the number of Navajo families remaining to be relocated and the total amount of funds necessary to complete the relocation program. In Committee hearings, testimony regarding the number of Navajo families awaiting their benefits varied from a minor difference between the Commission and the BIA (a difference over current HPL residents) to a larger difference between the Commission and the Navajo Tribe (regarding both HPL residents and Navajo families awaiting benefits off the HPL).

In addition to the six month enumeration report, the bill requires the Commission to report on how the Rehabilitation Trust Fund will be spent for the economic, educational and social needs of Navajo families and Navajo communities directly and substantially affected by the Act. The Committee also directs that the report include a discussion on the viability of a redevelopment fund that was proposed by the Administration. The Committee is inter-

ested in whether the Administration's proposal would be a practical means to assist in financing needed infrastructure, community and economic development and social services.

These sections of the bill also require the Commissioner to submit a plan within one year after the date the Commissioner is confirmed by the Senate. The Committee intends that this report should modify and update the 1981 Commission plan on how relocation is to be carried out, identification of relocation sites, and a plan to provide that adequate housing and related community facilities and services including water, sewer, roads, schools, and health facilities are available at relocation sites.

The one year plan is to also include the following:

A report on the employment training needs of all Indians that have been relocated under this Act.

The recommendations of the Commissioner for the economic development of the lands acquired by, or for the benefit of, the Navajo Tribe under section 11 of Public Law 93-531.

The separate views of both tribes.

Before final publication of the six month reports on enumeration and on the Rehabilitation Trust Fund authorized by section 8, as well as the one year plan, the Commissioner shall provide the Navajo tribe with a thirty day review and comment period. The Committee believes that this thirty day period is warranted because the Navajo tribe will eventually assume complete responsibility for addressing the needs of Navajo families affected by this Act. The Committee does not intend that either of the six month reports or the one year plan create or form a new basis for the suspension or delay in the relocation program.

On the basis of the one year plan, the Commissioner is to identify and coordinate existing federal resources for job training, economic assistance, and the infrastructure needs of Navajo people affected by Public Law 93-531.

Section 4(d) terminates the Navajo and Hopi Indian Relocation Commission. The Committee has provided a transition period whereby the Commission will continue to exist with the same structure, powers, and responsibilities until the first Commissioner is appointed.

Section 4(e) makes section 4 amendments effective on the date the Commissioner is confirmed by the Senate.

Section 5 prohibits lobbying by any entity which has a contract with the Commissioner. The Committee strongly opposes any lobbying on behalf of the Office that is performed with appropriated funds. The Commissioner is the one who is charged with the full-time responsibility for the relocation program. The Committee encourages the Commissioner to meet with members of the appropriate congressional committees at any time with respect to concerns and problems which he believes impede him in the performance of his duties.

Section 6 amends section 10 of Public Law 93-531 to allow for a modified lifting of the Bennett Freeze. The construction freeze will be lifted to allow for the improvement and repair of existing structures but only if it is necessary for the health or safety of the Navajo or Hopi Tribes or a member of either tribe. The amendment excludes new housing construction.

The amendment provides the Navajo and Hopi tribes with an opportunity to agree upon what types of repair and improvement can take place within the Bennett Freeze. The process of reaching a decision on what development can occur is initiated when one tribe petitions the other tribe with a request for development. The tribe receiving the request has thirty days to approve or disapprove the request. If the request is approved, no further action is required. If the tribe disapproves of the request they must state the reasons for denial in writing to the other tribe and provide a copy of their statement to the Commissioner. The petitioning tribe has the right to appeal the denied request to the Commissioner, who shall make the final decision within forty-five days based solely on whether the proposed development qualifies under the health or safety criteria.

The Committee intends that any development in the Bennett Freeze that is agreed to by both tribes or authorized by the Commissioner pursuant to this section be without prejudice to the rights of the parties in the civil action pending before the U.S. District Court for the District of Arizona. Further, the Committee believes that it should be conclusively presumed that any development is undertaken with the understanding that such activity will be subject to any court judgment issued by the U.S. District Court for the District of Arizona.

Section 7 limits the total amount of funding for attorneys fees to $150,000 per tribe for each fiscal year beginning in fiscal year 1989 and directs the Secretary to pay all outstanding legal fees incurred prior to enactment of these amendments.

The Committee is concerned about the continuing litigation that has arisen since the original Act was passed in 1974. The Committee believes that many of these lawsuits would never have been filed except for the ability of both tribes to off-set their litigation expenses with appropriated monies. The Committee believes it is necessary to cap this flow of money from the Federal Treasury in order to ward off the potential for new lawsuits. The Committee also notes that either tribe has the option, along with any federally recognized tribe, to seek relief from the Secretary of the Interior for litigation expenses. Of course, these monies, as well as the amount authorized under this section, are subject to annual appropriations.

The Committee does not intend that the reduced authorization levels for attorneys fees be construed to relieve the Secretary of his responsibility to pay the outstanding attorneys fees of either tribe, or to reduce the amount of attorneys fees authorized under this section by counting the reimbursement for past due attorneys fees as part of the attorneys fees authorized for each tribe. The Committee is concerned that the Secretary has fallen behind in reimbursing attorneys fees and requests a report on why such fees for either tribe have been rejected or have not been paid in a timely manner.

Section 8 establishes a trust fund for all income from lands acquired pursuant to Public Law 93-531. The income shall be used to benefit Navajo families and Navajo communities that are directly and substantially affected by Public Law 98-531.

Section 9 provides that the lands which were acquired or transferred to the Navajo tribe under section 11 of Public Law 93-531 shall be available to all Navajo families relocated under this Act.

Section 10 amends section 16 of Public Law 93-531 and takes effect in the event that one tribe owing rental payments to the other tribe fails or refuses to make such rental payments required under a Court judgment that is final and no longer appealable. The Secretary would be permitted to pay the required lease fees from any trust funds of the owing tribe in conformance with the Indian Judgment Fund Distribution Act.

The Committee believes that compliance with the Indian Judgment Fund Distribution Act is necessary for two reasons: first, it provides the owing tribe with a final opportunity to pay any required legal fees before their trust funds are tapped. Second, the Congress has the opportunity to review the Secretary's plan before final action is taken.

Section 11 provides that first the priority for relocation benefits will go to those families evicted pursuant to the order in *United States* v. *Kabinto* and that second priority will go to those families in the order in which they were certified for benefits. This section also provides the Commissioner with the flexibility to grant priority status to individuals on a case-by-case basis if he determines that they need to be moved out of order for medical, safety, or humanitarian reasons, including the readiness of the applicant to move.

The Committee believes it is necessary to provide statutory language delineating the priority the Commissioner should follow in providing benefits to Navajo families. The Committee is concerned that during the past fourteen years changing priorities in the provision of benefits has unfairly penalized some families by ranking them lower in priority even though these families have fully complied with the law and moved off the HPL with the expectation that they would receive their entitled benefits. The Committee believes that these changing priorities have also contributed to the reluctance of those residing on the HPL to move because they are uncertain how long they would have to wait before they would receive their benefits. While the language is designed to address this situation, the Committee is also mindful of the fact that the Commissioner must have flexibility to operate the relocation program. Thus, the Committee has provided the Commissioner with the authority to move individuals out of the chronological order if they fall within the special circumstances listed in the bill. The Committee affirms the Commission's policy of moving extended families together as units and this section should be interpreted to encourage continuation of that policy even if families are moved without regard to the chronological order in which there were certified for benefits.

Cost and Budgetary Considerations

The cost estimate of S. 1236, as amended, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1236, the Navajo and Hopi Indian Relocation Amendments of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1236.

2. Bill title: Navajo and Hopi Indian Relocation Amendments of 1988.

3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs, April 28, 1988.

4. Bill purpose: This bill would increase the authorization of appropriations to the Navajo and Hopi Indian Relocation Commission for payments to households relocated by the commission from $7.7 million to $13 million, and would increase the authorization of appropriations to the commission for housing assistance provided to those relocated from $15 million to $30 million annually.

In addition, the bill would establish the Office of Navajo and Hopi Indian Relocation within the Office of the Secretary of the Interior and would transfer the duties, powers, and funds of the commission, along with related activities of the Department of the Interior, to this new office. The office would be under the direction of the Commissioner on Navajo and Hopi Indian Relocation. The bill would require the Commissioner to submit certain information to the Congress, including a relocation report and plan, and to identify and coordinate federal services for those relocated.

The bill would authorize the appropriation of $100,000 per year to the office for legal services contracts, and would reduce the amount that may be provided to each of the Navajo and Hopi tribes for attorney services from $160,000 to $150,000 per year. The bill would also require the Commissioner to pay, as soon as possible after enactment and subject to appropriation, all outstanding attorney fees.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Authorization level	20	15	15	15	15
Estimated outlays	11	16	16	16	16

This bill affects budget function 800.

Basis of estimate: For purposes of this estimate, it was assumed that enactment of this bill would occur before the beginning of fiscal year 1989, that the amount authorized for payments to households would be appropriated for fiscal year 1989, and that the other amounts would be appropriated prior to the beginning of each fiscal year. Outlays are based on historical spending patterns of the commission.

Based on information provided by commission and Department of Interior staff, we estimate that transferring the commission's activities to the Department of the Interior would not result in significant reorganization or moving costs; however, costs could be incurred for such tasks such as planning, coordination of personnel and budgetary systems, and printing. We estimate that these costs would be less than $50,000. Other provisions of this bill are not expected to result in significant additional cost.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Carol Cohen.
10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1236, as amended, will have minimal impact on regulatory or paperwork requirements.

Executive Communications

The Committee received the following letters from the U.S. Department of the Interior giving the Administration's views on S. 1236:

U.S. Department of the Interior,
Office of the Secretary,
Washington, DC.

Hon. Daniel K. Inouye,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: During Fiscal Year 1987 the Navajo and Hopi Indian Relocation Commission (Commission) submitted a proposed re-authorization bill addressing continued funding to complete the Relocation Program. A similar bill is currently before your Committee as S. 1236. In December of 1987 Senator McCain proposed certain amendments to S. 1236 and on March 8, 1988 a revision of those amendments.

Although we share Senator McCain's desire to expedite the completion of the Commission's responsibilities under Public Law 93-531, we believe that the attached substitute amendments would better contribute to achieving that end than would Senator McCain's amendments.

The replacement of the current Commission with a single Commissioner and the conversion of the Commission's staff to career status will not in any way expedite completion of the relocation effort. Those changes, as well as the requirement to prepare and submit another report and plan, we believe, will in fact delay completion of the relocation.

We recommend that the Committee adopt the attached amendments as a substitute for the text of S. 1236.

EXPLANATION OF ATTACHED AMENDMENTS

Section 1 Housing and bonus payments

Section 1 of the attached amendment increases two appropriation authorizations in Public Law 93-531.

The first increase is in the amount of appropriations authorized for incentive payments. Section 14(b) of Public Law 93-531 mandates incentive payments for individuals who voluntarily applied for relocation within certain time periods. To date, the Commission has paid approximately $6,250,000 in incentive payments to 1,250 heads-of-households who have been relocated. The Commission has some 1,375 additional heads-of-household to be relocated who are eligible for incentive payments. The discharge of this obligation to those people will require approximately $6.6 million more in appropriations for incentive payments. We are therefore proposing that the total authorization, for this funding category, be increased to $13 million ($5.3 million above existing authority) in order to provide sufficient funds to complete this aspect of the program.

The second increase is in the amount of appropriations authorized for relocation housing, moving expenses, and payment for any habitation and other improvements left on the Hopi Partitioned Land (HPL) to which the relocatees are entitled under section 15 of Public Law 93-531. Public Law 93-531 as amended by Public Law 98-49 authorized appropriations of up to $15 million annually from Fiscal Years 1983 through 1987 to carry out section 15. The proposed bill would provide an aggregate appropriation authorization of $80,000,000 in Fiscal Year 1988 and subsequent years which represents the approximate costs of the completion of the Relocation Program.

The proposed authorization for housing represents the Administration's acknowledgment that resources should be made available to complete the program. The $80,000,000 amount proposed will be adequate for this purpose. By authorizing the total amount, without reference to a specific timeframe it will be possible for the Administration and the Congress to review on an annual basis the need for appropriations for replacement housing in accordance with competing priorities.

Section 2 Discretionary Fund

We are also proposing in the attached amendments a change in the existing Discretionary Fund Program which was added as section 27 of Public Law 93-531 by Congress in 1980. Under our proposed amendment those activities which are in support of the Commission's direct programmatic responsibilities would be funded in total by the Commission, rather than cost shared with other enti-

ties. This change will allow the Commission to meet the needs of the relocatees in a more direct manner and significantly improve the ability of the Commission to meet its responsibilities under the Act. There would be no change in the current authorization for a 30 percent match by the Commission of amounts provided by a Federal, State, local, or tribal government, tribal chapter, or private organization if providing those amounts would significantly assist either tribe in meeting the burdens imposed by Public Law 93-531.

Section 3 Expedited judicial process

Section 3 of the attached amendments relates to the dispute between the Hopi and Navajo Tribes of land in the so called 1934 area which was not settled by the partition of the 1882 joint use area.

Section 8 of Public Law 93-531 as enacted on December 22, 1974 requires a judicial resolution of the 1934 area dispute. Section 3(a) of the attached amendments preserves the judicial resolution but accelerates and expedites judicial resolution of the issue. However, the respective rights of the tribes in the 1934 area have not yet been determined. These amendments to section 8 allow the opportunity to appeal to the U.S. Supreme Court to expedite a judicial decision and do so without affecting the substantive rights of the tribes. The amendment would apply to all litigation under the act and not just that involving the 1934 area.

The amendments in section 3(b) of the attached amendments delete language in Public Law 93-531 that authorizes relocation of households from the 1934 area if the final judicial determination indicates that they are living in an area owned by the tribe of which they are not members. If the litigation results in a partitioning of the 1934 area we do not believe that a Federally required or funded relocation of households should be imposed without further consideration by the Congress and the Administration.

The amendment in section 3(c) of the attached amendments would grant the Secretary of the Interior authority to permit necessary development in the so called Bennett-freeze area after offering the tribes an opportunity to approve or otherwise comment on the proposed development. To avoid further litigation, the Secretary's decision would not be reviewable.

Section 4 Lump sum cash payment

Each head-of-household whose household is required to relocate who has not received benefits may elect to receive a one time cash payment in lieu of all other relocation housing, moving and other benefits under Public Law 93-531. Eligible heads-of-household who elect this option must provide proof satisfactory to the Commission that they currently occupy decent, safe, and sanitary dwellings as defined by the Commission. The cash payment shall be determined by adding the amount of the household's bonus payment, if eligible, plus $40,000, but may not exceed the cost of the benefits which the household would otherwise be entitled to under section 14 or 15 of Public Law 93-531 for any bonus payment due them, moving expenses due them, the purchase of any improvements they may have had on the Hopi Partitioned Land, and the amount in addi-

tion to that purchase price that "equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such household."

Section 5 Redevelopment Fund and use of income from land reserved for benefit of relocatees

Section 5 would establish a new fund, to be known as the Redevelopment Fund, which would be used to finance infrastructure, community and economic development, and social services for the benefit of Navajo relocatees moving to the New Lands. Previously these activities have been financed by the Bureau of Indian Affairs, the Commission's Discretionary Fund, and other Federal agencies, or not at all.

In the short term, the Redevelopment Fund would be funded by direct appropriation (we propose a $10 million per year authorization for fiscal years 1989 through 1992). However, the amendment proposed in section 5(c) provides that amounts expended from appropriations to the Fund would be repaid (with interest) to the Treasury from future income generated by the land subject to section 11(h) of Public Law 93-531. Any future income not needed for reimbursement to the Treasury would be deposited into the Redevelopment Fund to be spent for the same purposes as authorized for funds appropriated to the Fund.

Our intent in these provisions is to preserve the policy in section 11(h) of Public Law 93-531 that the lands involved be used solely for the benefit of relocatees. At the same time, use of the fund mechanism will permit the relocatees to begin receiving benefits as they are needed, rather than waiting for income from the land to start flowing. (We understand that coal revenues from the Paragon Ranch portion of the land are not likely to be available before 1992.) At the same time, the loan mechanism will lift the burden from taxpayers to provide these benefits and services, which are over and above the basic housing, bonus, and other benefits guaranteed by the Public Law 93-531 and which were not anticipated at the time of its enactment. We believe that it is highly appropriate that the income from this land, which would not have been conveyed to the Navajo Tribe but for relocation, should be used to support the development of land for the Navajo relocatees.

Loans from the Fund would be under terms and conditions consistent with the Federal credit policy as promulgated in OMB Circular No. A-70.

Section 6 Termination of Federal support for litigation

This provision gives notice to both tribes that the Government's subsidy of the ongoing litigation will cease at the end of fiscal year 1989. This will allow the tribes a reasonable amount of time to prepare for and transition toward the assumption of the costs of the pending litigation.

Section 7 Assuring tribal payment of required rents

This provision guarantees that any required lease fees will be paid by the Secretary from the trust funds of the owing tribe in the event the tribe fails or refuses to pay.

Section 8 Clarifying United States involvement in litigation

In its present form, paragraph (3) of section 18(a) of Public Law 93–531 (25 U.S.C. 640d–17(a)(3)) authorizes the two tribes to sue each other for adjudication of claims arising from the partition of the Joint Use Area. It also allows the United States to be named as a party to these tribal actions. The tribes have attempted to use this provision as a waiver of the United States' sovereign immunity to file damage claims against the United States. Our proposed amendment makes it clear that the United States was authorized to be named a party only in order to facilitate the payment of judgments out of each tribe's trust accounts, and because the United States is the owner, as trustee for the tribes, of the legal title to the land involved. However, the amendment does ensure that claims brought under section 6(d) of the act (25 U.S.C. 640d–5(d)) are preserved.

In its present form section 6(d) requires that the lands partitioned to the tribes be of equal value and, if they are not, that the United States must pay the difference in value to the affected tribe, if the United States can be proved to have failed to prevent the degradation of the land. One of the essential elements in determining this value is determining the value of grazing "in its fully restored state". This phrase is not defined in the act. The tribes argue that the phrase means virgin grazing land. Because the tribes did not acquire vested rights in the property until 1958, section 8(b) of our proposed amendment defines "restored state" by using 1958 as the date for determining range condition.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ROSS O. SWIMMER,
Assistant Secretary for Indian Affairs,
Department of the Interior.

HAWLEY A. ATKINSON,
Chairman, Navajo and Hopi
Indian Relocation Commission.

AMENDMENTS TO S. 1236 PROPOSED BY THE DEPARTMENT OF THE INTERIOR AND THE NAVAJO-HOPI RELOCATION COMMISSION

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. APPROPRIATION AUTHORIZATIONS.

(a) Section 25(a)(4) of Public Law 93–531 (25 U.S.C. 640d–24(a)(4)) is amended by deleting "$7,700,000" and insert in lieu thereof "$13,000,000".

(b) Section 25(a)(8) of Public Law 93–531 (25 U.S.C. 640d–24(a)(8)) is amended by adding the following new sentence at the end thereof: "There is hereby authorized to be appropriated in fiscal year 1988 and subsequent fiscal years an aggregate of $80,000,000 to complete the carrying out of section 15 of this Act."

SEC. 2. DISCRETIONARY FUND AUTHORIZATION AMENDMENTS.

Subsection (b) of section 27 of Public Law 93-531 (25 U.S.C. 640d-25(b)) is amended as follows:

(1) In subparagraph (1) delete "assist the Commission in carrying out its responsibilities or";

(2) by deleting the period at the end of subparagraph (2) and inserting in lieu thereof "; and"; and

(3) by adding immediately after subparagraph (2) the following new subparagraph (3):

"(3) engage or participate, either directly or under a contract or other agreement, in projects or activities that would significantly assist the Commission in carrying out its responsibilities under this Act."

SEC. 3. EXPEDITING RESOLUTION OF THE 1934 AREA DISPUTE.

(a) Section 8 of Public Law 93-531 (25 U.S.C. 640d-7) is further amended by adding the following new subsections at the end thereof:

"(f) Any district court decision rendered under this section shall be reviewable only by the Supreme Court pursuant to 28 U.S.C. 1254(1). The appeal must be taken by a notice of appeal filed within 10 days after the order is entered and the jurisdictional statement must be filed within 30 days after the order is entered. Any appeal pending upon enactment of this subsection which has not been heard by the United States Court of Appeals shall be dismissed and such action may be submitted to the Supreme Court of the United States as set out above.

"(g) It shall be the duty of a court to advance on the docket and to expedite to the greatest extent possible the disposition of an action or appeal pending before it under this section."

(b) The first sentence of subsection (a) of section 14 of Public Law 93-531 (25 U.S.C. 640d-13(a)) is amended by deleting the words "section 8 and" both times they appear.

(c) The first sentence of subsection (f) of section 10 of Public Law 93-531 as added by Public Law 96-305 (25 U.S.C. 640d-9(f)) is amended to read as follows: "Except for the limited areas around the village of Moenkopi and around Tuba City, the development of land which is the subject of an action under section 8 of this Act may be carried out if determined by the Secretary as necessary for the health, safety, or general welfare of either tribe or a member thereof after offering the tribes an opportunity to comment within 30 days of receipt of a written notice from the Secretary of the proposed development. The Secretary's decision shall be final and not reviewable."

SEC. 4. OPTIONAL METHOD FOR RELOCATEES TO RECEIVE ENTITLEMENT.

Section 15 of Public Law 93-531 (25 U.S.C. 640d-14) is amended by adding the following new subsections at the end thereof:

"(g) The head of a household entitled to benefits under section 14 of this Act and other subsections of this section

under a contract with the Commission may elect (before receipt of those benefits) a single cash payment under this subsection in lieu of any other benefits under those provisions if when the head of household so elects the household is occupying a decent, safe, and sanitary dwelling as defined or determined by the Commission. The cash payment shall be the lesser of (1) $40,000 plus an amount equal to the amount due the head of the household under subsection (b) (1), (2), (3), and (4) of section 14 of this Act, or (2) an amount equal to the total of the amounts to which the head of the household is entitled to receive under section 14 and subsections (a), (b)(2), and (d) of this section, as determined by the Commission.

"(h) The unobligated balance as of January 31, 1989 of amounts appropriated to the Secretary for the provision of housing and related facilities and other expenses in connection with relocation of households under this Act shall be available for obligation by the Commission under this section until expended and shall be in addition to amounts appropriated under section 25 of this Act."

SEC. 5. REDEVELOPMENT FUND AND USE OF INCOME FROM LAND RESERVED FOR BENEFIT OF RELOCATEES.

(a) Public Law 93-531 is amended by adding the following new section 31 at the end thereof:

"SEC. 30. REDEVELOPMENT FUND.

"(a) There is hereby established in the United States Treasury a fund to be known as the Redevelopment Fund. That fund will be administered by the Commission until the effective date of the President's determination under section 12(j) of this act after which the Fund shall be administered by the Secretary of the Interior. Under such rules and regulations as the Commission (or the Secretary of the Interior) may prescribe, funds appropriated to or deposited in the Fund may be used only for the benefit of the Navajo households described in section 11(h) of this act for purposes which will contribute to the continuing redevelopment and improvement of the economic, educational, and social conditions of those households including (1) construction, operation, and maintenance of community service facilities and infrastructure (e.g., schools, clinics, law enforcement facilities, roads, water and sewer connections, electrical connections, etc.), (2) loans, grants, and technical assistance to promote economic self-sufficiency, and (3) social services, including counseling, to minimize adverse social and psychological impacts of relocation.

"(b) The Commission (or the Secretary of the Interior) may request the Secretary of the Treasury to invest excess monies in the Fund in public debt securities of the United States with maturities suitable to the needs of the Fund, as determined by the Commission (or the Secretary of the Interior), and bearing interest at rates determined by the Secretary of the Treasury taking into consideration cur-

rent market yields on outstanding marketable obligations of the United States with comparable maturities.

"(c) Loans made for economic self-sufficiency purposes from the Fund established under this section will be on such terms and conditions as the Commission (or the Secretary of the Interior) may prescribe, except that:

"(1) A loan may be made only when necessary to alleviate a credit market imperfection or to achieve specific Federal objectives by providing a financial subsidy, when a financial subsidy is the most efficient way to meet those objectives on a borrower-by-borrower basis.

"(2) A loan will provide for complete amortization within a period of not to exceed 20 years, or 75% of the useful life of the physical asset to be financed by the loan, which ever is less as determined by the Commission (or the Secretary of the Interior).

"(3) The amount of a loan may not exceed 100% of cost of the activity to be financed.

"(4) A loan may not be subordinated to any other debt contracted by the borrower or to any other claims against the borrower.

"(5) A loan will bear an interest rate that is set by reference to the average market yield to maturity (or interest rate) of a benchmark financial instrument. The benchmark financial instrument will be chosen through reference to the financing costs that unassisted borrowers of credit worthiness similar to typical borrowers in the program would incur in borrowing funds for similar purposes and under similar conditions. The minimum interest rate of those loans will be at the yield (or interest rate) of the benchmark financial instrument. The interest rate of new loans will be adjusted at least every 12 months to take account of changes in the interest rate of the benchmark financial instrument.

"(6) The Commission (or the Secretary of the Interior) will provide explicit standards for use in periodically assessing the credit risk of new and existing loans and must find that there is a reasonable assurance of repayment before making a loan.

"(7) Within the resources and authority available, the gross obligations for the principal amount of loans will not exceed the amount specified in appropriations acts.

"(d) Notwithstanding any other law relating to the acquisition, handling, or disposal of property by the United States, the Commission (or the Secretary of the Interior) may complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Commission (or the Secretary) under this section."

(b) Section 25 of Public Law 93-531 (25 U.S.C. 640d-24 is amended by adding the following new paragraph at the end thereof:

"(9) There is authorized to be appropriated for the Redevelopment Fund created by section 31 of this act not to exceed $10,000,000 in each of fiscal years 1989, 1990, 1991, and 1992."

(c) Subsection (h) of section 11 of Public Law 93-531 (25 U.S.C. 640d-10(h)) is amended by adding the following sentences at the end thereof: "The income from the land shall be deposited in the Redevelopment Fund under section 31 of this act and shall be used to reimburse the General Fund of the United States Treasury for amounts appropriated to the Fund, plus interest. Interest shall accrue on the amount of unreimbursed appropriations utilized by the Fund at a rate to be determined by the Secretary of the Treasury (to be redetermined annually) taking into consideration the average market yields on outstanding marketable obligations of the United States with approximately one year remaining to maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest. Amounts not needed to make such reimbursements shall remain available until expended, for use as provided in section 31 of this act."

SEC. 6. TERMINATION OF SUPPORT FOR LITIGATION.

(a) Subsection (e) of section 8 of Public Law 93-531 (25 U.S.C. 640d-7(e)) is amended by (1) deleting "The Secretary of the Interior is authorized to" and inserting in lieu thereof "Until September 30, 1989, the Secretary may" and (2) by adding the following sentence at the end thereof: "The number of hours and hourly rates charged and other charges may not exceed amounts which the Secretary determines are clearly justified and reasonable.".

(b) Subsection (a) of section 29 of Public Law 93-531 as added by Public Law 96-305 (25 U.S.C. 640d-27(a)) is amended by inserting immediately before the period at the end thereof the following: "but not later than fiscal year 1989. The number of hours and hourly rates charged and other charges may not exceed amounts which the Secretary determines are clearly justified and reasonable".

SEC. 7. ASSURING TRIBAL PAYMENT OF REQUIRED RENTS.

Section 16 of Public Law 93-531 (25 U.S.C. 640d-15) is amended by adding the following new subsections at the end thereof:

"(c) Any district court decision rendered under this section shall be reviewable only by the Supreme Court pursuant to 28 U.S.C. 1254(1). The appeal must be taken by notice of appeal filed within 10 days after the order is entered and the jurisdictional statement must be filed within 30 days after the order is entered. Any appeal pending upon enactment of this subsection which has not been heard by the United States Court of Appeals shall be dismissed and such action may be submitted to the Supreme Court of the United States as set out above."

"(d) If a tribe has failed to make rent payments required under this section, the Secretary may make the payments on behalf of that tribe from any funds now or hereafter held in trust by the Secretary for that tribe."

"(e) A tribe may not make a payment under this section with funds appropriated by the Congress and provided to the tribe under a contract or agreement."

SEC. 8. CLARIFYING UNITED STATES INVOLVEMENT IN LITIGATION.

(a) The proviso in paragraph (3) of section 18(a) of Public Law 93-531 (25 U.S.C. 640d-17(a)(3)) is amended to read as follows: "*Provided,* That the United States may, for the purpose of making disbursements of trust funds of a tribe to satisfy judgments in favor of the other tribe as a result of an action filed under this subsection, be joined as a party to such an action and, in such case, sections 1346(a)(2) and 1505 of title 28, United States Code shall not apply to the action: *Provided further,* That no claim against the United States for damages arises under this subsection, or under any other provision of this act, except that the United States may be liable under section 6(d) of this act for not more than the difference one tribe is found to owe the other tribe in the owelty proceedings presently pending in *Sidney* v. *MacDonald,* Civ. No. 58-579 Pct.-Ehc (D. Ariz.)."

(b) The second proviso in section 6(d) of Public Law 95-531 (25 U.S.C. 640d-5(d)) is amended by deleting the words "in a fully restored state", and inserting in lieu thereof "if restored to the condition of the land as it existed on July 12, 1958".

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SUBCHAPTER XXII—NAVAJO AND HOPI TRIBES: SETTLEMENT OF RIGHTS AND INTERESTS

§ 640d. Mediator

(a) APPOINTMENT; DUTIES; QUALIFICATIONS; TERMINATION OF DUTIES.—Within thirty days after December 22, 1974, the Director of the Federal Mediation and Conciliation Service shall appoint a Mediator (hereinafter referred to as the "Mediator") who shall assist in the negotiations for the settlement and partition of the relative rights and interests, as determined by the decision in the case of Healing v. Jones (210 F.Supp. 125, D. Ariz., 1962, aff'd 363 U.S. 758, 1963) (hereinafter referred to as the "tribes") to and in lands within the reservation established by the Executive order of December 16, 1882, except land management district no. 6 (such lands hereinafter referred to as the "joint use area"). The Mediator

shall not have any interest, direct or indirect, in the settlement of the interests and rights set out in this subsection. The duties of the Mediator shall cease upon the entering of a full agreement into the records of the supplemental proceedings pursuant to section 640d–2 of this title or the submission of a report to the District Court after a default in negotiations or a partial agreement pursuant to section 640d–3 of this title.

(b) NATURE OF PROCEEDINGS.—The proceedings in which the Mediator shall be acting under the provisions of this subchapter shall be the supplemental proceedings in the Healing case now pending in the United States District Court for the District of Arizona (hereinafter referred to as "the District Court").

(c) INTERAGENCY COMMITTEE.—(1) The Mediator is authorized to request from any department, agency, or independent instrumentality of the Federal Government any information, personnel, service, or materials he deems necessary to carry out his responsibilities under the provisions of this subchapter. Each such department, agency, or instrumentality is authorized to cooperate with the Mediator and to comply with such requests to the extent permitted by law on a reimbursable or nonreimbursable basis.

(2) To facilitate the expeditious and orderly compilation and development of factual information relevant to the negotiating process, the President shall, within fifteen days of December 22, 1974, establish an interagency committee chaired by the Secretary of the Interior (hereinafter referred to as the "Secretary") to develop relevant information and to respond to the requests of the Mediator.

(d) LIAISON WITH SECRETARY.—The Secretary shall appoint a full-time representative as his liaison with the Mediator to facilitate the provision of information and assistance requested by the Mediator from the Department of the Interior.

(e) STAFF ASSISTANTS AND CONSULTANTS.—The Mediator may retain the services of such staff assistants and consultants as he shall deem necessary, subject to the approval of the Director of the Federal Mediation and Conciliation Service.

§ 640d–1. Negotiating teams

(a) APPOINTMENT; TIME; MEMBERSHIP AND CERTIFICATION; NATURE OF AUTHORITY.—Within thirty days after December 22, 1974, the Secretary shall communicate in writing with the tribal councils of the tribes directing the appointment of a negotiating team representing each tribe. Each negotiating team shall be composed of not more than five members to be certified by appropriate resolution of the respective tribal council. Each tribal council shall promptly fill any vacancies which may occur on its negotiating team. Notwithstanding any other provision of law, each negotiating team, when appointed and certified, shall have full authority to bind its tribe with respect to any other matter concerning the joint use area within the scope of this subchapter.

(b) FAILURE TO SELECT AND CERTIFY.—In the event either or both of the tribal councils fail to select and certify a negotiating team within thirty days after the Secretary communicates with the tribal council under subsection (a) of this section or to select and certify a replacement member within thirty days of the occurrence

of a vacancy, the provisions of section 640–3(a) of this title shall become effective.

(c) FIRST NEGOTIATING SESSION; TIME AND PLACE; CHAIRMAN; SUGGESTIONS FOR PROCEDURE, AGENDA, AND RESOLUTION OF ISSUES IN CONTROVERSY.—Within fifteen days after formal certification of both negotiating teams to the Mediator, the Mediator shall schedule the first negotiating session at such time and place as he deems appropriate. The negotiating sessions, which shall be chaired by the Mediator, shall be held at such times and places as the Mediator deems appropriate. At such sessions, the Mediator may, if he deems appropriate, put forward his own suggestions for procedure, the agenda, and the resolution of the issues in controversy.

(d) FAILURE TO ATTEND TWO CONSECUTIVE SESSIONS OR BARGAIN IN GOOD FAITH.—In the event either negotiating team fails to attend two consecutive sessions or in the opinion of the Mediator, either negotiating team fails to bargain in good faith or an impasse is reached, the provisions of section 640d–3(a) of this title shall become effective.

(e) DISAGREEMENTS WITHIN TEAM.—In the event of a disagreement within a negotiating team the majority of the members of the team shall prevail and act on behalf of the team unless the resolution of the tribal council certifying the team specifically provides otherwise.

§ 640d–2. Implementation of agreements

(a) FULL AGREEMENT.—If, within one hundred and eighty days after the first session scheduled by the Mediator under section 640d–1(c) of this title, full agreement is reached, such agreement shall be put in such form as the Mediator determines best expresses the intent of the tribes and shall then be submitted to the Secretary and the Attorney General of the United States for their comments as they relate to the interest of the United States in the proceedings. These comments are to be submitted to the Mediator and the negotiating teams within thirty days. The negotiating teams and the Mediator shall then consider the comments and, if agreement can still be reached on terms acceptable to the negotiating teams and the Mediator within sixty days of receipt by him of the comments, the agreement shall be put in final written form and shall be signed by the members of the negotiating teams and the Mediator. The Mediator shall then cause the agreement to be entered into the records of the supplemental proceedings in the Healing case. The provisions of the agreement shall be reviewed by the District Court, modified where necessary, and put into effect immediately thereafter.

(b) PARTIAL AGREEMENT.—If, within the one hundred and eighty day period referred to in subsection (a) of this section, a partial agreement has been reached between the tribes and they wish such partial agreement to go into effect, they shall follow the procedure set forth in subsection (a) of this section. The partial agreement shall then be considered by the Mediator in preparing his report, and the District Court in making a final adjudication, pursuant to section 640d–3 of this title.

(c) CONSISTENCY WITH EXISTING LAW.—For the purpose of this section, the negotiating teams may make any provision in the

agreement or partial agreement not inconsistent with existing law. No such agreement or any provision in it shall result in a taking by the United States of private property compensable under the Fifth Amendment of the Constitution of the United States.

§ 640d–3. Default or failure to reach agreement; recommendations to District Court; final adjudication; priority over other matters

If the negotiating teams fail to reach full agreement within the time period allowed in section 640d–2(a) of this title or if one or both of the tribes are in default under the provisions of section 640d–1 (b) or (d) of this title, the Mediator, within ninety days thereafter, shall prepare and submit to the District Court a report containing his recommendations for the settlement of the interests and rights set out in section 640d(a) of this title which shall be most reasonable and equitable in light of the law and circumstances and consistent with the provisions of this subchapter. Following the District Court's review of the report and recommendations (which are not binding thereon) and any further proceedings which the District Court may schedule, the District Court is authorized to make a final adjudication, including partition of the joint use area, and enter the judgments in the supplemental proceedings in the Healing case.

§ 640d–4. Authorized recommendations for facilitation of agreement or report to District Court; discretionary nature of recommendations

(a) For the purpose of facilitating an agreement pursuant to section 640d–2 of this title or preparing a report pursuant to section 640d–3 of this title, the Mediator is authorized—

(1) notwithstanding the provisions of section 211 of this title, to recommend that, subject to the consent of the Secretary, there be purchased or otherwise acquired additional lands for the benefit of either tribe from the funds of either tribe or funds under any other authority of law;

(2) to recommend that, subject to the consent of the Secretary, there be undertaken a program of restoration of lands lying within the joint use area, employing for such purpose funds authorized by this subchapter, funds of either tribe, or funds under any other authority of law;

(3) to recommend that, subject to the consent of the Secretary, there be undertaken a program for relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area;

(4) Repealed. Pub. L. 93–531, § 30(a), as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 934.

(5) to make any other recommendations as are in conformity with this subchapter and the Healing case to facilitate a settlement.

(b) The authorizations contained in subsection (a) of this section shall be discretionary and shall not be construed to represent any directive of the Congress.

§ 640d–5. Considerations and guidelines for preparation of report by Mediator and final adjudication by District Court

The Mediator in preparing his report, and the District Court in making the final adjudication, pursuant to section 640d–3 of this title, shall consider and be guided by the decision of the Healing case, under which the tribes have joint, undivided, and equal interests in and to all of the joint use area; by any partial agreement reached by the parties under section 640d–2(b) of this title; by the last best offer for a complete settlement as a part of the negotiating process by each of the tribes; and by the following:

(a) The rights and interests, as defined in the Healing case, of the Hopi Tribe in and to that portion of the reservation established by the Executive Order of December 16, 1882, which is known as land management district no. 6 (hereinafter referred to as the "Hopi Reservation") shall not be reduced or limited in any manner.

(b) The boundary lines resulting from any partitioning of lands in the joint use area shall be established so as to include the higher density population areas of each tribe within the portion of the lands partitioned to such tribe to minimize and avoid undue social, economic, and cultural disruption insofar as practicable.

(c) In any division of the surface rights to the joint use area, reasonable provision shall be made for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

(d) In any partition of the surface rights to the joint use area, the lands shall, insofar as is practicable, be equal in acreage and quality: *Provided,* That if such partition results in a lesser amount of acreage, or value, or both to one tribe such differential shall be fully and finally compensable to such tribe by the other tribe. The value of the land for the purposes of this subsection shall be based on not less than its value with improvements and its grazing capacity fully restored: *Provided further,* That, in the determination of compensation for any such differential, the Federal Government shall pay any difference between the value of the particular land involved in its existing state and the vaue of such land in a fully restored state which results from damage to the land which the District Court finds attributable to a failure of the Federal Government to provide protection where such protection is or was required by law or by the demands of the trust relationship.

(e) Any lands partitioned to each in the joint use area shall, where feasible and consistent with the other provisions of this section, be contiguous to the reservation of each such tribe.

(f) Any boundary line between lands partitioned to the two tribes in the joint use area shall, insofar as is practicable, follow terrain which will facilitate fencing or avoid the need for fencing.

(g) Any claim the Hopi Tribe may have against the Navajo Tribe for an accounting of all sums collected by the Navajo Tribe since September 17, 1957, as ttader license fees or commissions, lease, rental or proceeds, or other similar charges for doing business or for damages in the use of lands within the joint use area, shall be for a one-half share in such sums.

(h) Any claim the Hopi Tribe may have against the Navajo Tribe for the determination and recovery of the fair value of the grazing and agricultural use of the lands within the joint use area by the Navajo Tribe and its individual members, since September 28, 1962, shall be for one-half of such value.

§ 640d–6. Joint ownership and management of coal, oil, gas, and other minerals within or underlying partitioned lands; division of proceeds

Partition of the surface of the lands of the joint use area shall not affect the joint ownership status of the coal, oil, gas, and all other minerals within or underlying such lands. All such coal, oil, gas, and other minerals within or underlying such lands shall be managed jointly by the two tribes, subject to supervision and approval by the Secretary as otherwise required by law, and the proceeds therefrom shall be divided between the tribes, share and share alike.

§ 640d–7. Determination of tribal rights and interests in land

(a) AUTHORIZATION TO COMMENCE AND DEFEND ACTIONS IN DISTRICT COURT.—Either tribe, acting through the chairman of its tribal council for and on behalf of the tribe, is each hereby authorized to commence or defend in the District Court an action against the other tribe and any other tribe of Indians claiming any interest in or to the area described in the Act of June 14, 1934, except the reservation established by the Executive Order of December 16, 1882, for the purpose of determining the rights and interests of the tribes in and to such lands and quieting title thereto in the tribes.

(b) ALLOCATION OF LAND TO RESPECTIVE RESERVATIONS UPON DETERMINATION OF INTERESTS.—Land, if any, in which the Navajo Tribe or Navajo individuals are determined by the District Court to have the exclusive interest shall continue to be a part of the Navajo Reservation. Lands, if any, in which the Hopi Tribe, including any Hopi village or clan thereof, or Hopi individuals are determined by the District Court to have the exclusive interest shall thereafter be a reservation for the Hopi Tribe. Any lands in which the Navajo and Hopi Tribes or Navajo or Hopi individuals are determined to have a joint or undivided interest shall be partitioned by the District Court on the basis of fairness and equity and the area so partitioned shall be retained in the Navajo Reservation or added to the Hopi Reservation, respectively.

(c) ACTIONS FOR ACCOUNTING, FAIR VALUE OF GRAZING, AND CLAIMS FOR DAMAGES TO LAND; DETERMINATION OF RECOVERY; DEFENSES.—(1) Either as a part of or in a proceeding supplementary to the action authorized in subsection (a) of this section, either tribe, through the chairman of its tribal council for and on behalf of the tribe, including all villages, clans, and individual members thereof, may prosecute or defend an action for the types of relief, including interest, specified in section 640d–17 of this title, including all subsections thereof, against the other tribe, through its tribal chairman in a like representative capacity, and against the United States as to the types of recovery specified in subsection (a)(3) of section 640d–17 of this title and subject to the same provisions as contained in said subsection, such action to apply to the

lands in issue in the reservation established by the Act of June 14, 1934 (48 Stat. 960).

(2) In the event the Hopi Tribe or Navajo Tribe is determined to have any interest in the lands in issue, the right of either tribe to recover hereunder shall be based upon that percentage of the total sums collected, use made, waste committed, and other amounts of recovery, which is equal to the percentage of lands in issue in which either tribe is determined to have such interest.

(3) Neither laches nor the statute of limitations shall constitute a defense to such proceedings if they are either prosecuted as a part of the action authorized by this section or in a proceeding supplemental thereto, if instituted not later than twenty-four months following a final order of partition and exhaustion of appeals in an action filed pursuant to this section.

(d) DENIAL OF CONGRESSIONAL INTEREST IN MERITS OF CONFLICTING CLAIMS; LIABILITY OF UNITED STATES.—Nothing in this section shall be deemed to be a Congressional determination of the merits of the conflicting claims to the lands that are subject to adjudication pursuant to this section, or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

(e) PAYMENT OF LEGAL FEES, COURT COSTS AND OTHER EXPENSES.—The Secretary of the Interior is authorized to pay any or all appropriate legal fees, court costs, and other related expenses arising out of, or in connection with, the commencing of, or defending against, any action brought by the Navajo or Hopi Tribe under this section.

§ 640d–8. Allotments in severalty to Paiute Indians now located on lands; issue of patents declaring United States as trustee

Notwithstanding any other provision of this subchapter, the Secretary is authorized to allot in severalty to individual Paiute Indians, not now members of the Navajo Tribe, who are located within the area described in the Act of June 14, 1934 (48 Stat. 960), and who were located within such area, or are direct descendants of Paiute Indians who were located within such area, on the date of such Act, land in quantities as specified in section 331 of this title, and patents shall be issued to them for such lands having the legal effect and declaring that the United States holds such land in trust for the sole use and benefit of each allottee and, following his death, of his heirs according to the laws of the State of Arizona.

§ 640d–9. Partitioned or other designated lands

(a) LANDS TO BE HELD IN TRUST FOR NAVAJO TRIBE; EXCEPTION.—Subject to the provisions of sections 640d–8 and 640d–16(a) of this title, and lands partitioned to the Navajo Tribe pursuant to sections 640d–2 and 640d–3 of this title and the lands described in the Act of June 14, 1934 (48 Stat. 960), except the lands as described in section 640d–7 of this title, shall be held in trust by the United States exclusively for the Navajo Tribe and as a part of the Navajo Reservation.

(b) LANDS TO BE HELD IN TRUST FOR HOPI TRIBE.—Subject to the provisions of sections 640d–8 and 640d–16(a) of this title, any lands

partitioned to the Hopi Tribe pursuant to sections 640d–2 and 640d–3 of this title and the lands as described in section 640d–7 of this title shall be held in trust by the United States exclusively for the Hopi Tribe and as a part of the Hopi Reservation.

(c) PROTECTION OF RIGHTS AND PROPERTY OF INDIVIDUALS SUBJECT TO RELOCATION.—The Secretary shall take such action as may be necessary in order to assure the protection, until relocation, of the rights and property of individuals subject to relocation pursuant to this subchapter, or any judgment of partition pursuant thereto, including any individual authorized to reside on land covered by a life estate conferred pursuant to section 640d–2 of this title.

(d) PROTECTION OF BENEFITS AND SERVICES OF INDIVIDUALS SUBJECT TO RELOCATION.—With respect to any individual subject to relocation, the Secretary shall take such action as may be necessary to assure that such individuals are not deprived of benefits or services by reason of their status as an individual subject to relocation.

(e) Tribal Jurisdiction Over Partitioned Lands.—(1) Lands partitioned pursuant to this subchapter, whether or not the partition order is subject to appeal, shall be subject to the jurisdiction of the tribe to whom partitioned and the laws of such tribe shall apply to such partitioned lands under the following schedule:

(A) Effective ninety days after July 8, 1980, all conservation practices, including grazing control and range restoration activities, shall be coordinated and executed with the concurrence of the tribe to whom the particular lands in question have been partitioned, and all such grazing and range restoration matters on the Navajo Reservation lands shall be administered by the Bureau of Indian Affairs Navajo Area Office and on the Hopi Reservation lands by the Bureau of Indian Affairs Phoenix Area Office, under applicable laws and regulations.

(B) Notwithstanding any provision of law to the contrary, each tribe shall have such jurisdiction and authority over any lands partitioned to it and all persons located thereon, not in conflict with the laws and regulations referred to in paragraph (A) above, to the same extent as is applicable to those other portions of its reservation. Such jurisdiction and authority over partitioned lands shall become effective April 18, 1981.

The provisions of this subsection shall be subject to the responsibility of the Secretary to protect the rights and property of life tenants and persons awaiting relocation as provided in subsections (c) and (d) of this section.

(f) DEVELOPMENT OF LANDS IN LITIGATION; EXCEPTION.—[Any Development] *(1) Any development* of lands in litigation pursuant to section 640d–7 of this title and further defined as "that portion of the Navajo Reservation lying west of the Executive Order Reservation of 1882 and bounded on the north and south by westerly extensions, to the reservation line, of the northern and southern boundaries of said Executive Order Reservation," shall be carried out only upon the written consent of each tribe except for the limited areas around the village of Moenkopi and around Tuba City. Each such area has been heretofore designated by the Secretary. "Development" as used herein shall mean any new construction or improvement to the property and further includes public work

projects, power and water lines, public agency improvements, and associated rights-of-way.

(2) Each Indian tribe which receives a written request for the consent of the Indian tribe to a particular improvement, construction, or other development on the lands to which paragraph (1) applies shall respond in writing to such request by no later than the date that is 30 days after the date on which the Indian tribe receives the request. If the Indian tribe refuses to consent to the improvement, construction, or other development, the response shall include the reasons why consent is being refused.

(3)(A) Paragraph (1) shall not apply to any improvement, construction, or other development if—

(i) such improvement, construction, or development does not involve new housing construction, and

(ii) after the Navajo Tribe or Hopi Tribe has refused to consent to such improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Commissioner determines that such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either Tribe.

(B) If a written request for a determination described in subparagraph (A)(ii) is submitted to the Commissioner after the Navajo Tribe or Hopi Tribe has refused to consent to any improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Commissioner shall, by no later than the date that is 45 days after the date on which such request is submitted to the Commissioner, determine whether such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either Tribe.

§ 640d–10. Resettlement lands for Navajo Tribe

(a) TRANSFER OF LANDS UNDER JURISDICTION OF BUREAU OF LAND MANAGEMENT; STATE AND PRIVATE LAND EXCHANGES; VALUATION; ACQUIRED PRIVATE LANDS; LANDS TO BE HELD IN TRUST.—The Secretary is authorized and directed to—

(1) transfer not to exceed two hundred and fifty thousand acres of lands under the jurisdiction of the Bureau of Land Management within the State [1] of Arizona and New Mexico to the Navajo Tribe: *Provided,* That, in order to facilitate such transfer, the Secretary is authorized to exchange such lands for State or private lands of equal value or, if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands transferred out of Federal ownership. The Secretary shall try to reduce the payment to as small an amount as possible.

(2) on behalf of the United States, accept title to not to exceed one hundred and fifty thousand acres of private lands acquired by the Navajo Tribe. Title thereto shall be taken in

the name of the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation.

Subject to the provisions of the following sentences of this subsection, all rights, title and interest of the United States in the lands described in paragraph (1), including such interests the United States as lessor has in such lands under the Mineral Leasing Act of 1920, as amended [30 U.S.C.A. § 181 et seq.], will, subject to existing leasehold interests, be transferred without cost to the Navajo Tribe and title thereto shall be taken by the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation. So long as selected lands coincide with pending noncompetitive coal lease applications under the Mineral Leasing Act of 1920, as amended [30 U.S.C.A. § 181 et seq.], the Secretary may not transfer any United States interests in such lands until the noncompetitive coal lease applications have been fully adjudicated. If such adjudication results in issuance of Federal coal leases to the applicants, such transfer shall be subject to such leases. The leaseholders rights and interests in such coal leases will in no way be diminished by the transfer of the rights, title and interests of the United States in such lands to the Navajo Tribe. If any selected lands are subject to valid claims located under the Mining Law of 1872 the transfer of the selected lands may be made subject to those claims.

(2) Those interests in lands acquired in the State of New Mexico by the Navajo Tribe pursuant to subsection 2 of this section shall be subject to the right of the State of New Mexico to receive the same value from any sales, bonuses, rentals, royalties and interest charges from the conveyance, sale, lease, development, and production of coal as would have been received had the subsurface interest in such lands remained with the United States and been leased pursuant to the Mineral Lands Leasing Act of 1920, as amended [30 U.S.C.A. § 181 et seq.], or any successor Act; or otherwise developed. The State's interest shall be accounted for in the same manner as it would have been if a lease had issued pursuant to the Mineral Lands Leasing Act of 1920, as amended [30 U.S.C.A. § 181 et seq.].

(b) PROXIMITY OF LANDS TO BE TRANSFERRED OR ACQUIRED TO NAVAJO RESERVATION; LANDS TO BE USED FOR EXCHANGES.—A border of any parcel of land so transferred or acquired shall be within eighteen miles of the present boundary of the Navajo Reservation: *Provided*, That, except as limited by subsection (g) of this section, Bureau of Land Management lands anywhere within the States of Arizona and New Mexico may be used for the purpose of exchanging for lands within eighteen miles of the present boundary of the reservation.

(c) SELECTION OF LANDS TO BE TRANSFERRED OR ACQUIRED; TIME PERIOD; CONSULTATION; RESTRICTION ON NEW MEXICO LANDS.—Lands to be so transferred or acquired shall, for a period of three years after July 8, 1980, be selected by the Navajo Tribe after consultation with the Commission: *Provided*, That, at the end of such period, the Commission shall have the authority to select such lands after consultation with the Navajo Tribe: *Provided further*, That not to exceed thirty-five thousand acres of lands so transferred or acquired shall be selected within the State of New Mexico.

(d) PROGRESS AND STATUS OF LAND TRANSFER PROGRAM; REPORTS TO CONGRESSIONAL COMMITTEES.—[The Commission] *The Commissioner* in consultation with the Secretary, shall within sixty days following the first year of enactment of this subsection report to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs, on the progress of the land transfer program authorized in subsection (a) of this section. Sixty days following the second year of enactment of this subsection [the Commission] *the Commissioner* in consultation with the Secretary, shall submit a report to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs giving the status of the land transfer program authorized in subsection (a) of this section, making any recommendations that [the Commission] *the Commissioner* deems necessary to complete the land transfer program.

(e) ENTITLEMENT LANDS PAYMENTS.—Payments being made to any State or local government pursuant to the provisions of the Act of October 20, 1976 (90 Stat. 2662; 31 U.S.C. 1601 et seq.), on any lands transferred pursuant to subsection (a)(1) of this section shall continue to be paid as if such transfer had not occurred.

(f) ACQUISITION OF TITLE TO SURFACE AND SUBSURFACE INTEREST; TIME PERIOD; PUBLIC NOTICE; REPORT TO CONGRESSIONAL COMMITTEES; RIGHTS OF SUBSURFACE OWNER.—(1) For a period of three years after July 8, 1980, the Secretary shall not accept title to lands acquired pursuant to subsection (a)(2) of this section unless fee title to both surface and subsurface has been acquired or the owner of the subsurface interest consents to the acceptance of the surface interest in trust by the Secretary.

(2) If, ninety days prior to the expiration of such three year period, the full entitlement of private lands has not been acquired by the Navajo Tribe and accepted by the Secretary in trust for the Navajo Tribe under the restrictions of paragraph (1) of this subsection, [the Commission] *the Commissioner,* after public notice, shall, within thirty days, make a report thereon to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs.

(3) In any case where the Secretary accepts, in trust, title to the surface of lands acquired pursuant to subsection (a)(2) of this section where the subsurface interest is owned by third parties, the trust status of such surface ownership and the inclusion of the land within the Navajo Reservation shall not impair any existing right of the subsurface owner to develop the subsurface interest and to have access to the surface for the purpose of such development.

(g) LANDS NOT AVAILABLE FOR TRANSFER.—No public lands lying north and west of the Colorado River in the State of Arizona shall be available for transfer under this section.

(h) ADMINISTRATION OF LANDS TRANSFERRED OR ACQUIRED.—The lands transferred or acquired pursuant to this section shall be administered by [the Commission] *the Commissioner* until relocation under [the Commission] *the Commissioner's* plan is complete and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of [the date of this subsection who are awaiting relocation under this subchapter] *the date of the enactment of this Act.*

(i) NEGOTIATIONS REGARDING LAND EXCHANGES OR LEASES.—[The Commission] *the Commissioner* shall have authority to enter into negotiations with the Navajo and Hopi Tribes with a view to arranging and carrying out land exchanges or leases, or both, between such tribes; and lands which may be acquired or transferred pursuant to this section may, with the approval of [the Commission] *the Commissioner,* be included in any land exchange between the tribes authorized under section 640d–22 of this title.

§ 640d–11. Navajo and Hopi Indian Relocation Commission

(a) ESTABLISHMENT.—[There is hereby established as an independent entity in the executive branch the Navajo and Hopi Indian Relocation Commission (hereinafter referred to as the "Commission").] *There is hereby established within the Office of the Secretary of the Interior, the Office of Navajo and Hopi Indian Relocation, which shall be under the direction of the Commissioner on Navajo and Hopi Indian Relocation (hereafter in this Act referred to as the "Commissioner").*

(b) MEMBERSHIP; APPOINTMENT.—[The Commission shall be composed of three members appointed by the Secretary within sixty days of December 22, 1974.] *(1) The Commissioner shall be appointed by the President, by and with the advice and consent of the Senate.*

(2) The term of office of the Commissioner shall be 5 years. An individual may be appointed Commissioner for more than one term.

(c) CHAIRMAN AND VICE CHAIRMAN.—[The Commission shall elect a Chairman and Vice Chairman from among its members.] *(1)(A) Except as otherwise provided by any amendment made by the Navajo and Hopi Indian Relocation Amendments of 1988, the Commissioner shall have all the powers, and be responsible for all the duties, that the Navajo and Hopi Indian Relocation Commission had before the enactment of the Navajo and Hopi Indian Relocation Amendments of 1988.*

(B) Notwithstanding any other provision of law, all funds appropriated to the Navajo and Hopi Indian Relocation Commission before the date on which the first Commissioner on Navajo and Hopi Indian Relocation is appointed that have not been expended on such date shall be transferred to the Office of Navajo and Hopi Indian Relocation on such date and shall remain available without fiscal year limitation.

(2) There are hereby transferred to the Commissioner, on October 1, 1988—

(A) all powers and duties the Bureau of Indian Affairs has on September 30, 1988, that relate to the relocation of members of the Navajo Tribe from lands partitioned to the Hopi Tribe and

(B) all funds appropriated to the Bureau of Indian Affairs for activities relating to such relocation, which shall be used by the Commissioner for the purpose for which such funds were appropriated to the Bureau of Indian Affairs.

[(d) QUORUM; VACANCIES.—Two members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

[(e) COMPENSATION; EXPENSES.—Each member of the Commission who is not otherwise employed by the United States Government shall receive an amount equal to the daily rate paid a GS–18 under the General Schedule contained in section 5332 of Title 5 for each day (including time in travel) or portion thereof during which such member is engaged in the actual performance of his duties as a member of the Commission. A member of the Commission who is an officer or employee of the United States shall serve without additional compensation. All members of the Commission shall be reimbursed for travel, subsistence, and other expenses incurred by them in the performance of their duties.

[(f) FIRST MEETING.—The first meeting of the Commission shall be called by the Secretary forthwith following the date on which a majority of the members of such Commission are appointed and qualified under this subchapter, but in no event later than sixty days following such date.]

[(g)] *(d)* POWER OF CHAIRMAN.—[Subject to such rules and regulations as may be adopted by the Commission, the Chairman] *(1) The Commissioner* shall have the power to—

[(1) appoint] *(A) appoint* and fix the compensation of an Executive Director, and independent legal counsel, and such additional staff personnel as he deems necessary, without regard to the provisions of Title 5 governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of Title 5 relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of Title 5; and

[(2) procure] *(B) procure* temporary and intermittent services to the same extent as is authorized by section 3109 to Title 5, but at rates not to exceed $150 a day for individuals.

(2)(A) The authority of the Commissioner to enter into contracts for the provision of legal services for the Commissioner or for the Office of Navajo and Hopi Indian Relocation shall be subject to the availability of funds provided for such purpose by appropriations Acts.

(B) There are authorized to be appropriated for each fiscal year $100,000 to fund contracts described in subparagraph (A).

[(h)] *(e)* ADMINISTRATIVE, FISCAL, AND HOUSEKEEPING SERVICES.— The Commission is authorized to provide for [its own] *the* administrative, fiscal, and housekeeping services *of the Office of Navajo and Hopi Indian Relocation.*

[(i)] *(f)* ASSISTANCE FROM OTHER FEDERAL DEPARTMENTS AND AGENCIES; REPORT TO CONGRESS ON FAILURE TO FURNISH ASSISTANCE.— (1) [The Commission] *The Commissioner* is authorized to call upon any department or agency of the United States to assist [the Commission] *the Commissioner* in implementing [its] *the* relocation plan and completing relocation within the time required by law, except that the control over and responsibility for completing relocation shall remain in [the Commission.] *the Commissioner.* In any case in which [the Commission] *the Commissioner* calls upon any such department or agency for assistance under this section, such department or agency shall provide reasonable assistance so requested.

(2) On failure of any agency to provide reasonable assistance as required under paragraph (1) of this subsection, [the Commission] *the Commissioner* shall report such failure to the Congress.

[(j)] *(g)* TERMINATION OF COMMISSION.—The [Commission] *Office of Navajo and Hopi Indian Relocation* shall cease to exist when the President determines that its functions have been fully discharged.

§ 640d–12. Report concerning relocation of households and members of each tribe

(a) PREPARATION AND SUBMISSION TO CONGRESS; TIME.—[Within the twenty-four month period following the date of issuance of an order of the District Court pursuant to section 640d–2 or 640d–3 of this title,] *By no later than the date that is 6 months after the date on which the first Commissioner is appointed,* [the Commission] *the Commissioner* shall prepare and submit to the Congress a report concerning the relocation of households and members thereof of each tribe, and their personal property, including livestock, from lands partitioned to the other tribe pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title.

(b) CONTENTS.—[Such report] *The report required under subsection (a)* shall contain, among other matters, the following:

(1) the names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo Tribe; [and]

(2) the names of all other members of the Navajo Tribe, and of all other members of the Hopi Tribe, who are eligible for benefits provided under this Act and who have not received all the benefits for which such members are eligible under this Act; and

[(2)] *(3)* the fair market value of the habitations and improvements owned by the heads of households identified by [the Commission] *the Commissioner* as being among the persons named in clause (1) of this subsection [.[*"; and"*

(4) a report on how funds in the Navajo Rehabilitation Trust Fund will be expended to carry out the purposes described in section 32(d),

(c) DETAILED PLAN FOR RELOCATION.—[Such report shall include] *By no later than the date that is 1 year after the date on which the first Commissioner is appointed, the Commissioner shall submit to the Congress", and* a detailed plan providing for the relocation of the households and their members identified pursuant to clause (1) of subsection (b) of this section. Such plan (hereinafter referred to as the "relocation plan") shall—

(1) be developed to the maximum extent feasible in consultation with the persons involved in such relocation and appropriate representatives of their tribal councils;

(2) take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts;

(3) identify the sites to which such households shall be relocated, including the distance involved;

(4) assure that housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities, for such households shall be available at their relocation sites; and

(5) take effect ninety days after the date of submission to the Congress pursuant to subsection (a) of this section: *Provided, however,* That [the Commission] *the Commissioner* is authorized and directed to proceed with voluntary relocations as promptly as practicable following its first meeting.

(d) The Commissioner shall include with the plan submitted to the Congress under subsection (c)—

(1) a report on the employment training needs of all Indians that have been relocated under this Act,

(2) recommendations for the economic development of the lands acquired by, or for the benefit of, the Navajo Tribe under section 11, and

(3) an official statement of the Navajo Tribe and an official statement of the Hopi Tribe that express the views of each of the Tribes on such plan.

(e) On the basis of the plan submitted to the Congress under subsection (c), the Commissioner shall identify and coordinate existing Federal programs that—

(1) provide job training for individuals involved in the relocations carried out under this Act,

(2) provide for the economic assistance of households relocated under this act, and

(3) provide water, roads, sewers, community facilities, and health facilities to serve the needs of such households.

(f) Before submitting to the Congress the report and plan that are required to be submitted under this section, the Commissioner shall provide a period of 30 days in which persons involved in the relocations made under this act and appropriate representatives of their tribes are allowed to comment on the report and plan.

§ 640d–13. Relocation of households and members

(a) AUTHORIZATION; TIME OF COMPLETION; PROHIBITION OF FURTHER SETTLEMENT OF NONMEMBERS WITHOUT WRITTEN APPROVAL; LIMIT ON GRAZING OF LIVESTOCK.—Consistent with section 640d–7 of this title and the order of the District Court issued pursuant to section 640d–2 or 640d–3 of this title, the [Commission] *Commissioner* is authorized and directed to relocate pursuant to section 640d–7 of this title and such order all households and members thereof and their personal property, including livestock, from any lands partitioned to the tribe of which they are not members. The relocation shall take place in accordance with the relocation plan and shall be completed by the end of five years from the date on which the relocation plan takes effect. No further settlement of Navajo individuals on the lands partitioned to the Hopi Tribe pursuant to this subchapter or on the Hopi Reservation shall be permitted unless advance written approval of the Hopi Tribe is obtained. No further settlement of Hopi individuals on the lands partitioned to the Navajo Tribe pursuant to this subchapter or on the

Navajo Reservation shall be permitted unless advance written approval of the Navajo Tribe is obtained. No individual shall hereafter be allowed to increase the number of livestock he grazes on any area partitioned pursuant to this subchapter to the tribe of which he is not a member, nor shall he retain any grazing rights in any such area subsequent to his relocation therefrom.

(b) ADDITIONAL PAYMENTS TO HEADS OF HOUSEHOLD; TIME.—In addition to the payments made pursuant to section 640d–14 of this title, the [Commission] *Commissioner* shall make payments to heads of households identified in the report prepared pursuant to section 640d–12 of this title upon the date of relocation of such households, as determined by the [Commission,] *Commissioner,* in accordance with the following schedule:

(1) the sum of $5,000 to each head of a household who, prior to the expiration of one year after the effective date of the relocation plan, contracts with the [Commission] *Commissioner* to relocate;

(2) the sum of $4,000 to each head of a household who is not eligible for the payment provided for in clause (1) of this subsection but who, prior to the expiration of two years after the effective date of the relocation plan, contracts with the [Commission] *Commissioner* to relocate;

(3) the sum of $3,000 to each head of a household who is not eligible for the payments provided for in clause (1) or (2) of this subsection but who, prior to the expiration of three years after the effective date of the relocation plan, contracts with the [Commission] *Commissioner* to relocate; and

(4) the sum of $2,000 to each head of a household who is not eligible for the payments provided for in clause (1), (2), or (3) of this subsection but who, prior to the expiration of four years after the effective date of the relocation plan, contracts with the [Commission] *Commissioner* to relocate.

(c) PAYMENTS TO OR FOR ANY PERSON MOVING INTO PARTITIONED AREA AFTER MAY 29, 1974.—No payment shall be made pursuant to this section to or for any person who, after May 29, 1974, moved into an area partitioned pursuant to section 640d–7 of this title or section 640d–2 or 640d–3 of this title to a tribe of which he is not a member.

(d)(1) Except as provided in paragraph (2), the Commissioner shall provide relocation benefits under this Act to applicants in the chronological order in which the applicants are certified for such benefits, but the Commissioner may grant priority status on a case-by-case basis to applicants based on medical, safety, or humanitarian reasons, including the readiness of the applicant to move.

(2) The Commissioner shall give first priority in the provision of relocation benefits under this Act to those families who were evicted pursuant to an order issued in the case United States v. Kabinto, 456 F.2d 1087 (1972).

§ 640d–14. Relocation housing

(a) PURCHASE OF HABITATION AND IMPROVEMENTS FROM HEAD OF HOUSEHOLD; FAIR MARKET VALUE.—[The Commission] *The Commissioner* shall purchase from the head of each household whose household is required to relocate under the terms of this subchap-

ter the habitation and other improvements owned by him on the area from which he is required to move. The purchase price shall be the fair market value of such habitation and improvements as determined under section 640d–12(b)(2) of this title.

(b) REIMBURSEMENT FOR MOVING EXPENSES; PAYMENT FOR REPLACEMENT DWELLING; LIMITATIONS.—In addition to the payments made pursuant to subsection (a) of this section, [the Commission] *the Commissioner* shall:

(1) reimburse each head of a household whose household is required to relocate pursuant to this subchapter for the actual reasonable moving expenses of the household as if the household members were displaced persons under section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) [42 U.S.C.A. § 4622];

(2) pay to each head of a household whose household is required to relocate pursuant to this subchapter an amount which, when added to the fair market value of the habitation and improvements purchased under subsection (a) of this section, equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such household: *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed $17,000 for a household of three or less and not more than $25,000 for a household of four or more, except that [the Commission] *the Commissioner* may, after consultation with the Secretary of Housing and Urban Development, annually increase or decrease such limitations to reflect changes in housing development and construction costs, other than costs of land, during the preceding year: *Provided further*, That the additional payment authorized by this subsection shall be made only to a head of a household required to relocate pursuant to this subchapter who purchases and occupies such replacement dwelling not later than the end of the two-year period beginning on the date on which he receives from the [Commission] *Commissioner* final payment for the habitation and improvements purchased under subsection (a) of this section, or on the date on which such household moves from such habitation, whichever is the later date. The payments made pursuant to this paragraph (2) shall be used only for the purpose of obtaining decent, safe, and sanitary replacement dwellings adequate to accommodate the households relocated pursuant to this subchapter.

(c) ESTABLISHMENT OF STANDARDS CONSISTENT WITH OTHER LAWS; PAYMENTS TO OR FOR ANY PERSON MOVING INTO PARTITIONED AREA AFTER SPECIFIED TIME.—In implementing subsection (b) of this section, the [Commission] *Commissioner* shall establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1984) [42 U.S.C.A. § 4601 et seq.]. No payment shall be made pursuant to this section to or for any person who, later than one year prior to December 22, 1974, moved into an area partitioned pursuant to section 640d–7 of this title or section 640d–2 or 640d–3 of this title to a tribe of which he is not a member.

(d) METHODS OF PAYMENT.—The [Commission] *Commissioner* shall be responsible for the provision of housing for each household

eligible for payments under this section in one of the following manners:

(1) Should any head of household apply for and become a participant or homebuyer in a mutual help housing or other homeownership opportunity project undertaken under the United States Housing Act of 1937 (50 Stat. 888) as amended [42 U.S.C.A. § 1437 et seq.], or in any other federally assisted housing program now or hereafter established, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section shall be paid to the local housing agency or sponsor involved as a voluntary equity payment and shall be credited against the outstanding indebtedness or purchase price of the household's home in the project in a manner which will accelerate to the maximum extent possible the achievement by that household of debt free homeownership.

(2) Should any head of household wish to purchase or have constructed a dwelling which the [Commission] *Commissioner* determines is decent, safe, sanitary, and adequate to accommodate the household, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section shall be paid to such head of household in connection with such purchase or construction in a manner which the [Commission] *Commissioner* determines will assure the use of the funds for such purpose.

(3) Should any head of household not make timely arrangements for relocation housing, or should any head of household elect and enter into an agreement to have [the Commission] *the Commissioner* construct or acquire a home for the household, [the Commission] *the Commissioner* may use the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section for the construction or acquisition (including enlargement or rehabilitation if necessary) of a home and related facilities for such household: *Provided,* That, [the Commission] *the Commissioner* may combine the funds for any number of such households into one or more accounts from which the costs of such construction or acquisition may be paid on a project basis and the funds in such account or accounts shall remain available until expended: *Provided further,* That the title to each home constructed or acquired by [the Commission] *the Commissioner* pursuant to this paragraph shall be vested in the head of the household for which it was constructed or acquired upon occupancy by such household, but this shall not preclude such home being located on land held in trust by the United States.

(e) DISPOSAL OF ACQUIRED DWELLINGS AND IMPROVEMENTS.—[the Commission] *the Commissioner* is authorized to dispose of dwellings and other improvements acquired or constructed pursuant to this subchapter in such manner, including resale of such dwellings and improvements to members of the tribe exercising jurisdiction over the area at prices no higher than the acquisition or construction costs, as best effects section

640d–7 of this title and the order of the District Court pursuant to section 640d–2 or 640d–3 of this title.

(f) PREFERENTIAL TREATMENT FOR HEADS OF HOUSEHOLDS OF NAVAJO TRIBE EVICTED FROM HOPI RESERVATION BY JUDICIAL DECISION; RESTRICTION.—Notwithstanding any other provision of law to the contrary, [the Commission] *the Commissioner* shall on a preferential basis provide relocation assistance and relocation housing under subsections (b), (c), and (d) of this section to the head of each household of members of the Navajo Tribe who were evicted from the Hopi Indian Reservation as a consequence of the decision in the case of United States v. Kabinto (456 F.2d 1087 (1972)): *Provided,* That such heads of households have not already received equivalent assistance from Federal agencies.

§ 640d–15. Payment of fair rental value for use of lands subsequent to date of partition

(a) The Navajo Tribe shall pay to the Hopi Tribe the fair rental value as determined by the Secretary for all use by Navajo individuals of any lands partitioned to the Hopi Tribe pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title subsequent to the date of the partition thereof.

(b) The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary for all use by Hopi individuals of any lands partitioned to the Navajo Tribe pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title subsequent to the date of the partition thereof.

(c)(1) If the Navajo Tribe or the Hopi Tribe has refused to make rental payments required under this section, the Secretary may, subject to the provisions of this subsection, make the payments on behalf of the Tribe out of any funds held in trust by the United States for the benefit of the Tribe if the determination of the Secretary with respect to the delinquent rental payment is final and no longer appealable.

(2) Funds appropriated by the Congress and provided to the Navajo Tribe or Hopi Tribe under any contract or agreement may not be used to make any payments required under this section.

(3) The Secretary shall submit to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives written notice of each payment the Secretary intends to make under paragraph (1). The notice shall specify the amount of such payment and the source of the funds from which such payment is proposed to be made.

(4)(A) No payment may be made by the Secretary under paragraph (1) before the close of the 60-day period beginning on the date on which notice of the payment is provided under paragraph (3) to the committee described in paragraph (3). Any days on which either House of the Congress is not in session because of adjournment of more than 3 calendar days shall be excluded in computing such 60-day period.

(B) The Secretary may not make a payment under paragraph (1) if a joint resolution disapproving of such payment is enacted into law during the 60-day period described in subparagraph (A).

§ 640d–16. Title, possession and enjoyment of lands for which patents have issued not affected; jurisdiction of respective tribes over nonmembers; relocation of Federal employees; election to relocate

(a) Nothing in this subchapter shall affect the title, possession, and enjoyment of lands heretofore allotted to Hopi and Navajo individuals for which patents have been issued. Such Hopi individuals living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and such Navajo individuals living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Tribe.

(b) Nothing in this subchapter shall require the relocation from any area partitioned pursuant to this subchapter of the household of any Navajo or Hopi individual who is employed by the Federal Government within such area or to prevent such employees or their households from residing in such areas in the future: *Provided,* That any such Federal employee who would, except for the provisions of this subsection, be relocated under the terms of this subchapter may elect to be so relocated.

§ 640d–17. Action for accounting, fair value of grazing, and claims for damages to land

(a) AUTHORIZATION TO COMMENCE AND DEFEND ACTIONS IN DISTRICT COURT.—Either tribe, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof, is hereby authorized to commence or defend in the District Court an action or actions against the other tribe for the following purposes if such action or actions are not settled pursuant to section 640d–2 or 640d–3 of this title:

(1) for an accounting of all sums collected by either tribe since the 17th day of September 1957 as trader license fees or commissions, lease proceeds, or other similar charges for the doing of business or the use of lands within the joint use area, and judgment of one-half of all sums so collected, and not paid to the other tribe, together with interest at the rate of 6 per centum per annum compounded annually;

(2) for the determination and recovery of the fair value of the grazing and agricultural use by either tribe and its individual members since the 28th day of September 1962 of the undivided one-half interest of the other tribe in the lands within the joint use area, together with interest at the rate of 6 per centum per annum compounded annually, notwithstanding the fact that the tribes are tenants in common of such lands; and

(3) for the adjudication of any claims that either tribe may have against the other for damages to the lands to which title was quieted as aforesaid by the United States District Court for the District of Arizona in such tribes, share and share alike, subject to the trust title of United States, without interest, notwithstanding the fact that such tribes are tenants in common of such lands: *Provided,* That the United States may be joined as a party to such an action and, in such case, the

provisions of sections 1346(a)(2) and 1505 of Title 28 shall not be applicable to such action.

(b) DEFENSE.—Neither laches nor the statute of limitations shall constitute a defense to any action authorized by this subchapter for existing claims if commenced within two years from December 22, 1974, or one hundred and eighty days from the date of issuance of an order of the District Court pursuant to section 640d–2 or 640d–3 of this title, whichever is later.

(c) FURTHER ORIGINAL, ANCILLARY OR SUPPLEMENTARY ACTIONS TO INSURE QUIET ENJOYMENT.—Either tribe may institute such further original, ancillary, or supplementary actions against the other tribe as may be necessary or desirable to insure the quiet and peaceful enjoyment of the reservation lands of the tribes by the tribes and the members thereof, and to fully accomplish all objects and purposes of this subchapter. Such actions may be commenced in the District Court by either tribe against the other, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof.

(d) UNITED STATES AS PARTY; JUDGMENTS AS CLAIMS AGAINST THE UNITED STATES.—Except as provided in clause (3) of subsection (a) of this section, the United States shall not be an indispensable party to any action or actions commenced pursuant to this section. Any judgment or judgments by the District Court in such action or actions shall not be regarded as a claim or claims against the United States.

(e) REMEDIES.—All applicable provisional and final remedies and special proceedings provided for by the Federal Rules of Civil Procedure and all other remedies and processes available for the enforcement and collection of judgments in the district courts of the United States may be used in the enforcement and collection of judgments obtained pursuant to the provisions of this subchapter.

§ 640d–18. Reduction of livestock within joint use area

(a) RETURN TO CARRYING CAPACITY OF LANDS AND INSTITUTION OF CONSERVATION PRACTICES TO RESTORE GRAZING POTENTIAL.—Notwithstanding any provision of this subchapter, or any order of the District Court pursuant to section 640d–2 or 640d–3 of this title, the Secretary is authorized and directed to immediately commence reduction of the numbers of all the livestock now being grazed upon the lands within the joint use area and complete such reductions to carrying capacity of such lands, as determined by the usual range capacity standards as established by the Secretary after December 22, 1974. The Secretary is directed to institute such conservation practices and methods within such area as are necessary to restore the grazing potential of such area to the maximum extent feasible.

(b) SURVEY LOCATION OF MONUMENTS AND FENCING OF BOUNDARIES.—The Secretary, upon the date of issuance of an order of the District Court pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title, shall provide for the survey location of monuments, and fencing of boundaries of any lands partitioned pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title.

(c) COMPLETION OF SURVEYING, MONUMENTING, AND FENCING OPERATIONS, AND LIVESTOCK REDUCTION PROGRAM.—(1) Surveying, monumenting, and fencing as required by subsection (b) of this sec-

tion shall be completed within twelve months after July 8, 1980, with respect to lands partitioned pursuant to section 640d–3 of this title and within twelve months after a final order of partition with respect to any lands partitioned pursuant to section 640d–7 of this title.

(2) The livestock reduction program required under subsection (a) of this section shall be completed within eighteen months after July 8, 1980.

§ 640d–19. Perpetual use of Cliff Spring as shrine for religious ceremonial purposes; boundary; piping of water for use by residents

The members of the Hopi Tribe shall have perpetual use of Cliff Spring as shown on USGS 7½ minute Quad named Toh Ne Zhonnie Spring, Arizona, Navajo County, dated 1968; and located 1,250 feet west and 200 feet south of the intersection of 36 degrees, 17 minutes, 30 seconds north latitude and 110 degrees, 9 minutes west longitude, as a shrine for religious ceremonial purposes, together with the right to gather branches of fir trees growing within a 2-mile radius of said spring for use in such religious ceremonies, and the further right of ingress, egress, and regress between the Hopi Reservation and said spring. The Hopi Tribe is hereby authorized to fence said spring upon the boundary line as follows:

Beginning at a point on the 36 degrees, 17 minutes, 30 seconds north latitude, 500 feet west of its intersection with 110 degrees, 9 minutes west longitude, the point of beginning;

thence north 46 degrees west, 500 feet to a point on the rim top at elevation 6,900 feet;

thence southwesterly 1,200 feet (in a straight line) following the 6,900 feet contour;

thence south 46 degrees east, 600 feet;

thence north 38 degrees east, 1,300 feet to the point of beginning, 23.8 acres more or less: *Provided*, That, if and when such spring is fenced, the Hopi Tribe shall pipe the water therefrom to the edge of the boundary as hereinabove described for the use of residents of the area. The natural stand of fir trees within such 2-mile radius shall be conserved for such religious purposes.

§ 640d–20. Use and right of access to religious shrines on reservation of other tribe

Notwithstanding anything contained in this subchapter to the contrary, the Secretary shall make reasonable provision for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

§ 640d–21. Payments not to be considered as income for eligibility under any other Federal or federally assisted program or for assistance under Social Security Act or for revenue purposes

The availability of financial assistance of funds paid pursuant to this subchapter may not be considered as income or resources or otherwise utilized as the basis (1) for denying a household or

member thereof participation in any federally assisted housing program or (2) for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act [42 U.S.C.A. § 301 et seq.] or any other Federal or federally assisted program. None of the funds provided under this subchapter shall be subject to Federal or State income taxes.

§ 640d–22. Authorization for exchange of reservation lands; availability of additional relocation benefits; restrictions

The Navajo and Hopi Tribes, are hereby authorized to exchange lands which are part of their respective reservations. In the event that the tribes should negotiate and agree on an exchange of lands pursuant to authority granted herein [the Commission] *the Commissioner* shall make available 125 per centum of the relocation benefits provided in sections 640d–13 and 640–14 of this title to members of either tribe living on land to be exchanged to other than his or her own tribe, except that such benefits shall be available only if, within one hundred and eighty days of the agreement, a majority of the adult members of the tribe who would be eligible to relocate from exchange lands sign a contract with [the Commission] *the Commissioner* to relocate within twelve months of the agreement or such later time as determined by [the Commission] *the Commissioner* and such additional benefits shall only be paid to those who actually relocate within such period.

§ 640d–23. Separability of provisions

If any provision of this subchapter, or the application of any provision to any person, entity or circumstance, is held invalid, the remainder of this subchapter shall not be affected thereby.

§ 640d–24. Authorization of appropriations; availability of sums until expended

(a)(1) For the purpose of carrying out the provisions of section 640d–14 of this title, there is hereby authorized to be appropriated not to exceed $31,500,000.

(2) For the purpose of carrying out the provisions of section 640d–18(a) of this title, there is hereby authorized to be appropriated not to exceed $10,000,000.

(3) For the purpose of carrying out the provisions of section 640d–18(b) of this title, there is hereby authorized to be appropriated not to exceed $500,000.

(4) For the purpose of carrying out the provisions of section 640d–13(b) of this title, there is hereby authorized to be appropriated not to exceed [$7,700,000] *$13,000,000.*

(5) There is hereby authorized to be appropriated annually not to exceed $4,000,000 for the expenses of [the Commission] *the Commissioner.*

(6) There is hereby authorized to be appropriated not to exceed $500,000 for the services and expenses of the Mediator and the assistants and consultants retained by him: *Provided,* That, any contrary provision of law notwithstanding, until such time as funds are appropriated and made available pursuant to this authorization, the Director of the Federal Mediation and Conciliation Serv-

ice is authorized to provide for the service and expenses of the Mediator from any other appropriated funds available to him and to reimburse such appropriations when funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt thereof.

(7) For the purpose of carrying out the provision of subsection (i) of section 640d–28 of this title, there is authorized to be appropriated, effective in fiscal year 1981, not to exceed $1,000,000 annually.

(8) For the purposes of carrying out the provisions of section 640d–14 of this title, there is authorized to be appropriated not to exceed [$15,000,000 annually for fiscal years 1983 through 1987] *$30,000,000 for fiscal year 1988, and for each succeeding fiscal year.*

(b) The funds appropriated pursuant to the authorizations provided in this subchapter shall remain available until expended.

§ 640d–25. Discretionary fund to expedite relocation efforts

(a) AUTHORIZATION OF APPROPRIATIONS.—~~To~~ facilitate and expedite the relocation efforts of the [Commission] *Commissioner* is hereby authorized to be appropriated annually, effective in fiscal year 1981, not to exceed $6,000,000 as a discretionary fund.

(b) AUTHORIZED USES; RESTRICTION ON USE OF ADMINISTRATIVE EXPENSES.—[Such funds may only be used by the Commission to—

[(1) match or pay not to exceed 30 per centum of any grant, contract, or other expenditure of the Federal Government, State or local government, tribal government or chapter, or private organization for the benefit of the Navajo or Hopi Tribe, if such grant, contract, or expenditure would significantly assist the Commission in carrying out its responsibilities or assist either tribe in meeting the burdens imposed by this subchapter;

[(2) engage or participate, either directly or by contract, in demonstration efforts to employ innovative energy or other technologies in providing housing and related facilities and services in the relocation and resettlement of individuals under this subchapter.

Not to exceed 5 per centum of such funds may be used for the administrative expenses of the Commission in carrying out this section.] *Funds appropriated under the authority of subsection (a) may be used by the Commissioner for grants, contracts, or expenditures which significantly assist the Commissioner in carrying out the duties of the Commissioner or assist the Navajo Tribe or Hopi Tribe in meeting the burdens imposed by this Act.*

(c) FUNDING AND CONSTRUCTION OF HOPI HIGH SCHOOL AND MEDICAL CENTER.—The Secretary of the Interior and the Secretary of Health and Human Services, as appropriate, shall assign the highest priority, in the next fiscal year after July 8, 1980, to the funding and construction of the Hopi high school and Hopi medical center consistent with any plans already completed and approved by appropriate agencies of the respective departments.

§ 640d–26. Environmental impact; applicability of wilderness study; cancellation of grazing leases and permits

(a) No action taken pursuant to, in furtherance of, or as authorized by this subchapter, shall be deemed a major Federal action for purposes of the National Environmental Policy Act of 1969, as amended [42 U.S.C.A. § 4321 et seq.].

(b) Any transfer of public lands pursuant to his subchapter shall be made notwithstanding the provisions of sections 1782 and 1752(g) of Title 43.

§ 640d–27. Attorney fees, costs and expenses for litigation or court action

(a) PAYMENT BY SECRETARY; AUTHORIZATION OF APPROPRIATIONS.—In any litigation or court action between or among the Hopi Tribe, the Navajo Tribe and the United States or any of its officials, departments, agencies, or instrumentalities, arising out of the interpretation or implementation of this subchapter, as amended, the Secretary shall pay, subject to the availability of appropriations, attorney's fees, costs and expenses as determined by the Secretary to be reasonable. For each tribe, there is hereby authorized to be appropriated not to exceed $120,000 in fiscal year 1981, $130,000 in fiscal year 1982, $140,000 in fiscal year 1983, $150,000 in fiscal year 1984, and $160,000 in fiscal year 1985, and each succeeding year thereafter until such litigation or court action is finally completed.

(b) AWARD BY COURT; REIMBURSEMENT TO SECRETARY.—Upon the entry of a final judgment in any such litigation or court action, the court shall award reasonable attorney's fees, costs and expenses to the party, other than the United States or its officials, departments, agencies, or instrumentalities, which prevails, or substantially prevails, where it finds that any opposing party has unreasonably initiated or contested such litigation. Any party to whom such an award has been made shall reimburse the United States out of such award to the extent that it has received payments pursuant to subsection (a) of this section.

(c) EXCESS DIFFERENCE BETWEEN AWARD OF COURT AND AWARD OF SECRETARY TREATED AS FINAL JUDGMENT OF UNITED STATES CLAIMS COURT.—To the extent that any award made to a party against the United States pursuant to subsection (b) of this section exceeds the amount paid to such party by the United States pursuant to subsection (a) of this section, such difference shall be treated as if it were a final judgment of the United States Claims Court under section 2517 of Title 28.

(d) LITIGATION OR COURT ACTIONS APPLICABLE.—This section shall apply to any litigation or court action pending upon July 8, 1980, in which a final order, decree, judgment has not been entered, but shall not apply to any action authorized by section 640d–7 or 640d–17(a) of this title.

(e)(1) The total amount of funds that may be provided under this section and section 8(e) for each Indian tribe for attorney services rendered after the date of enactment of the Navajo and Hopi Indian Relocation Amendments of 1988 shall not exceed $150,000 per fiscal year.

(2) Subject to the availability of appropriated funds, the Secretary shall pay, as soon as possible after the date of enactment of the Navajo and Hopi Indian Relocation Amendments of 1988, all attorney fees that are authorized to be paid under this section or section 8(e) for services rendered prior to such date. The Secretary shall submit to the Congress a written statement explaining why any claims for such attorney fees have been rejected or have not been paid in a timely manner.

§ 640d–28. Life estates

(a) [Omitted.]

(b) APPLICATION FOR LEASE; CONTENTS; FILING DATE; EXTENSION.—Any Navajo head of household who desires to do so may submit an application for a life estate lease to [the Commission] *the Commissioner*. Such application shall contain such information as [the Commission] *the Commissioner* may prescribe by regulation, such regulation to be promulgated by the [Commission] *Commissioner* within ninety days of July 8, 1980. To be considered, such application must be filed with [the Commission] *the Commissioner* on or before April 1, 1981: *Provided,* That [the Commission] *the Commissioner* may, for good cause, grant an extension of one hundred and eighty days.

(c) APPLICATION GROUPINGS.—Upon receipt of applications filed pursuant to this section, [the Commission] *the Commissioner* shall group them in the following order:

(A) Applicants who are determined to be at least 50 per centum disabled as certified by a physician approved by [the Commission] *the Commissioner*. Such applicants shall be ranked in the order of the severity of their disability.

(B) Applicants who are not at least 50 per centum disabled shall be ranked in order of their age with oldest listed first and the youngest listed last: *Provided,* That, if any applicant physically resides in quarter quad Nos. 78 NW, 77 NE, 77 NW, 55 SW, or 54 SE as designated on the Mediator's partition map, such applicant shall be given priority over another applicant of equal age.

(C) Applicants who did not, as of December 22, 1974, and continuously thereafter, maintain a separate place of abode and actually remain domiciled on Hopi partitioned lands, and who, but for this subsection would be required to relocate, shall be rejected by [the Commission.] *the Commissioner.*

(D) Applicants who were not at least forty-nine years of age on December 22, 1974, or are not at least 50 per centum disabled, shall also be rejected by the Commission.

(d) NUMBER OF LEASES; PRIORITIES.—[The Commission] *The Commissioner* shall have authority to award life estate leases to not more than one hundred and twenty applicants with first priority being given to applicants listed pursuant to subsection (c)(A) of this section and the next priority being given to the applicants listed pursuant to subsection (c)(B) of this section, in order of such listing.

(e) AREA; ALLOWABLE LIVESTOCK; ASSISTANCE BY SECRETARY IN FEEDING LIVESTOCK.—Each life estate lease shall consist of a fenced area not exceeding ninety acres of land which shall include the life

tenant's present residence and may be used by the life tenant to feed not to exceed twenty-five sheep units per year or equivalent livestock. The Secretary, under existing authority, shall make available to life estate tenants such assistance during that tenure, as may be necessary to enable such tenant to feed such livestock at an adequate nutritional level.

(f) INDIVIDUALS PERMITTED TO RESIDE; REGULATIONS.—No person may reside on a life estate other than the life tenant, his or her spouse, and minor dependents, and/or such persons who are necessarily present to provide for the care of the life tenant. [The Commission] *The Commissioner* shall promulgate regulations to carry out the intent of this subsection.

(g) TERMINATION.—The life estate tenure shall end by voluntary relinquishment, or at the death of the life tenant or the death of his or her spouse, whichever occurs last; *Provided.* That each survivorship right shall apply only to those persons who were lawfully married to each other on or before July 8, 1980.

(h) RELOCATION BENEFITS UPON VOLUNTARY RELINQUISHMENT; COMPENSATION UPON DEATH OF LIFE TENANT OR SURVIVING SPOUSE; RELOCATION OF DEPENDENTS.—Nothing in this section shall be construed as prohibiting any such applicant who receives a life estate lease under this section from relinquishing, prior to its termination, such estate at any time and voluntarily relocating. Upon voluntary relinquishment of such estate, by such means or instrument as the Secretary shall prescribe, such applicant shall be entitled to relocation benefits from the Secretary comparable to those provided by section 640d–14 of this title. For life estates terminated by the death of the life tenant or his or her surviving spouse, compensation shall be paid to the estate of the deceased life tenant or surviving spouse based on the fair market value of the habitation and improvements at the time of the expiration of such tenure and not before. Such payments shall be in lieu of any other payment pursuant to subsection (a) of section 640d–14 of this title. Assistance provided pursuant to section 640d–14(b) of the title, shall be paid to any head of household lawfully residing on such life estate pursuant to subsection (f) of this section who is required to move by the termination of such life estate by the death of the life tenant and his or her surviving spouse and who does not maintain a residence elsewhere. Compensation under section 640d–14(a) of this title shall be paid and distributed in accordance with the last will and testament of the life tenant or surviving spouse or, in the event no valid last will and testament is left, compensation shall be paid and distributed to his or her heirs in accordance with existing Federal law. Upon termination of a life estate by whatever means, the dependents residing with the individuals having such life estate so terminated shall have ninety days following such terminations within which to relocate.

(i) PAYMENT OF FAIR MARKET RENTAL VALUE.—The Secretary shall pay, on an annual basis, the fair market rental value of such life estate leases to the tribe to whom the lands leased were partitioned.

(j) IMPROVEMENTS.—Nothing in this subchapter or any other law shall be construed to prevent a life tenant from making reasonable

improvements on the life estate which are related to the residence and agricultural purposes of the life tenancy.

(k) ADDITIONAL LEASES FOR HOPI HEADS OF HOUSEHOLD.—[The Commission] *The Commissioner* is authorized to grant not to exceed ten additional life estate leases to Hopi heads of household residing on Navajo-partitioned lands under such terms of this section as may be appropriate.

SEC. 31. No person who has entered into a contract with the Commissioner to provide services under this Act may, during any period occurring after the date of enactment of the Navajo and Hopi Indian Relocation Amendments of 1988 in which such contract is in effect, engage in activities designed to influence Federal legislation on any issue relating to the relocations required under this Act.

SEC. 32. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the 'Navajo Rehabilitation Trust Fund', which shall consist of the funds transferred under subsection (b) and any interest or investment income accrued on such funds.

(b) All of the income derived by the Navajo Tribe from the surface and mineral estates of lands located in New Mexico that are acquired for the benefit of the Navajo Tribe under section 11 shall be deposited into the Navajo Rehabilitation Trust Fund.

(c) The Secretary shall be the trustee of the Navajo Rehabilitation Trust Fund and shall be responsible for investment of the funds in such Trust Fund.

(d) Funds in the Navajo Rehabilitation Trust Fund, including any interest or investment accruing thereon, shall be available to the Navajo Tribe, with the approval of the Secretary. solely for purposes which will contribute to the continuing rehabilitation and improvement of the economic, educational, and social condition of families, and Navajo communities, that have been affected by—

(1) the decision in the Healing case, or related proceedings,

(2) the provisions of this Act, or

(3) the establishment by the Secretary of the Interior of grazing district number 6 as land for the exclusive use of the Hopi Tribe.

(e) The Navajo Rehabilitation Trust Fund shall terminate on the date that is 30 years after the date of enactment of this Act and all funds in the Trust Fund on such date shall be transferred to the general trust funds of the Navajo Tribe.

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